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ABSTRACT

Designed for use in the high school curriculum, two lessons introduce students to contemporary issues surrounding the American jury system and to political, legal, and economic systems of other countries. Although intended for use with a filmstrip, cassette, computer software, and a computer instructional manual, activities in the teaching guide can be used independently. For each lesson, background information, statement of purpose, objectives, vocabulary words, and student activities and handouts are provided. Lesson one focuses on contemporary issues confronting the jury system, such as size of jury and length of service. Lesson two, "Comparative Judicial Systems: A Global Perspective," examines the role of the public in the judicial process in Western and European communist countries. Students explore the Chinese court system, its mediation process, the rights of women, selected family law issues, the juvenile justice system, sentencing practices, and individual rights. The document concludes with a list of related resources, guidelines for resource persons, and charts depicting the court systems of North Carolina and the People's Republic of China. (LH)

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Teaching about Our Jury System

Teaching Guide Unit 2

SO 016 180

TEACHING ABOUT OUR JURY SYSTEM

UNIT TWO

OUR RIGHT TO AN IMPARTIAL JURY OF OUR PEERS

OUR ROLE TO SERVE AS AN IMPARTIAL
FACTFINDER WHEN CALLED FOR JURY SERVICE

OUR RESPONSIBILITY AS GLOBAL CITIZENS TO UNDERSTAND
THE JUDICIAL SYSTEMS OF OTHER COUNTRIES

A FIVE PART EDUCATIONAL PROGRAM INCLUDING A FILM STRIP,
CASSETTE, TEACHING GUIDE, COMPUTER COURSEWARE
AND COMPUTER INSTRUCTIONAL MANUAL

TEACHING ABOUT OUR JURY SYSTEM

Unit Two

Our RIGHT to an Impartial Jury of Our Peers

Our RESPONSIBILITY TO Serve As an Impartial Factfinder When Called for Jury Service

Our ROLE as Global Citizens to Understand the Judicial Systems of Other Countries

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INTRODUCTION

Thomas Jefferson once said that the jury system was "the only anchor ever imagined by man by which a government can be held to the principles of its constitution." For the average citizen to participate in our government, there are three avenues: voting, military service, and jury service.

The purpose of this five-part teaching package on the jury system is to enable educators to instruct students about the contemporary issues surrounding the American jury system and to address the conceptual and constitutional issues surrounding the system. This teaching package includes a 14-minute film strip and cassette modeled after an actual North Carolina juror orientation slide program, a teacher's guide, and a computer program and instructional manual designed to reinforce and support the educational process. There are two separate units to the teaching package. Unit 1 is designed for use in the junior high school curriculum, and Unit 2 is suggested for use in the senior high school. The same film strip is used for both units. Each unit has its own teacher's guide and courseware program and instructional manual.

Not only are Americans guaranteed the *right* to trial by jury in both criminal and civil cases through the Sixth and Seventh Amendments of the United States Constitution (applied to the states through the Fourteenth Amendment), but in most states, everyone 18 or older has a *responsibility* to serve on one of those juries. The right to jury trial in North Carolina is reinforced through Article I, Sections 24 and 25 of the State Constitution, and the responsibility to serve is stated in Article I, Section 26 and includes those individuals 18 years of age and older.

PROGRAM DESIGN AND CONTENT

Teaching About Our Jury System, *Unit 2* is designed for a high school law-related education course, a world issues course or any other course which explores the political, legal and economic systems of other countries, and compares and contrasts these systems with those in the United States.

It is suggested that teachers review Unit 1 which was introduced as part of the new North Carolina ninth grade course in the 1983-84 school year. Unit 2 does not attempt to duplicate or summarize materials found in Unit 1. For exploring and contrasting court systems in other countries with those at the state and federal level in this country, students should use Unit 1 as a resource, along with the new publication by the N. C. Justice Academy entitled *Learning the Law.* Both books are included in the ninth grade course. However, if your students did not for some reason have the course, it is recommended these books be reviewed by the teacher before starting Unit 2.

This broad approach to teaching about our jury system takes an analytical look at the term "juror" as including the public's involvement in the justice system. Lesson One, entitled "Contemporary Issues Confronting the Jury System," focuses on issues confronting the American jury system today. Some of these issues relate to the best size of a jury. Should a jury be composed of six persons? Can it be less? Does the Constitution intend for a jury to be composed of 12 persons? Regardless of the size, should all verdicts be unanimous? Can a jury reflect the feelings of the community while only requiring a majority vote to reach a verdict? Other issues include the length of service. In some European countries and Communist countries, jurors are elected by the public and serve as long as two years, but only at specific times of the year. Should citizens' service be limited to one day or one trial, as is the growing practice in North Carolina? Should jurors serve for a week? a month? What did the Bill of Rights intend under the 6th and 7th Amendments?

This broad approach to the involvement of the community in the judicial process is expanded in Lesson Two entitled "Comparative Judicial Systems: A Global Perspective." The role of the public in the judicial process in other countries is examined. This can not be understood without a close look at the contrasting court systems. The adversary system found in the United States is compared with the inquisitory system found in many European countries, such as France and West Germany, and in Communist countries, like Russia and China. The adversary system places its emphasis on two sides coming before the court and presenting opposing points of view before a judge who serves as "referee" and a jury which serves as a neutral fact finding group.

Under an inquisitorial system, the judge plays the major role. Often the judge is accompanied on the bench by two "assessor" or lay judges elected by the community. These judges ask questions, conduct investigations, decide guilt or innocence and decide on appropriate sentences. In an inquisitorial system there is no place for a lay jury as is found in this country.

In a limited view, the public is represented in the judicial process through the elected assessors. They are not there to listen but to play a major role in that process. France is one country that appears to have combined both uses of public participation in the judicial process. France has assessors, but judges also have the option of impanelling a jury. However, the jury only answers yes or no to limited questions. The assessors vote in secret, with the majority ruling.

The People's Republic of China (P.R.C.) was selected as the inquisitory judicial process to explore in depth. China was chosen for two reasons. With one fourth of the world's population, China plays a major role in the world economic, political and military scene. In addition, since the end of Mao Tse-tung's Cultural Revolution in 1976, a new judicial and legal system has emerged in the P. R. C. It is important that students understand China in the context of world affairs.

China has the oldest continual legal system in the world. It's system is the third oldest in origin, following the Egyptian and Mesopotian systems that emerged prior to 4000 B.C. Students will explore the role of the Chinese people in that judicial system today. Though in the adjudication process, there are no juries, only assessors elected by the people, the public plays a major role before and after adjudication. Lay committees are responsible for extensive local mediation efforts to resolve civil and minor criminal disputes before issues can be appealed to the court. If a case does go to court and the defendant in a criminal case is found guilty, the sentence usually focuses on "re-education" as a form of changing the person's behavior patterns. The public, and not a probation department under the court, is responsible for this re-education process.

Under Lesson Two activities and handouts, students will explore the Chinese court system, its mediation process, the rights of women, selected family law issues, the juvenile justice system, sentencing practices and individual rights. These student activities are designed to introduce these issues, but are not attempts at in-depth exploration. However, if time permits, students are encouraged to select comparative issues of interest and research them.

There is a great deal of factual information on the Chinese judicial and legal systems contained in this teaching guide, heretofore not researched and published for high school use. Teachers are encouraged to develop their own activities and teaching strategies for communicating this information to students in a meaningful way. There are eight teaching strategies offered in Lesson Two.

By studying other systems of justice and controversial issues relating to our own jury system, students will develop a greater understanding of the role of the public in the various judicial processes. These judicial procedures are examined against the historical, cultural, political and economic influences of the respective governments.

SKILL DEVELOPMENT

Specific skills will be developed and reinforced through this learning process. Problem-solving skills will be reinforced through identifying conflicts in court rulings regarding the jury system, by locating and acquiring information needed to solve problems through observations, questions and use of prepared materials. Students will develop and reinforce self-management skills by becoming aware of thoughts and feelings of others during jury deliberation, by accepting diversity and conflict among people as inevitable and natural, and by learning how to resolve and manage conflicts. Students will expand their skills in research, interviewing and writing.

Students will reinforce their abilities to participate in group activities by: (1) listening accurately to verbal messages during court testimony; (2) interpreting feelings as expressed by tones and actions of others; (3) initiating ideas which reflect verbal and non-verbal information; (4) negotiating differences with other students; (5) becoming involved with members of the community; and (6) participating in the democratic procedures that are fundamental to the jury process. Students will learn to distinguish between facts and inferences and to apply their common sense to jury deliberations in the cases which they experience or observe.

As a right and a responsibility of American citizenship, it is critical that students understand the jury system and experience the process so that they will be prepared to serve when called. Students need to understand the value of the right to trial by jury if ever they are placed in a position to be judged by their impartial peers. Students receive information about criminal and civil jury trials almost daily through the news media. Before they graduate from high school, they could be called to serve on a jury as actual participants in our democratic system of government. These lessons will help students understand the media accounts of cases and will prepare them for effective jury participation.

LESSON COMPONENTS

The lessons include commentary and background information on each topic which can be shared with students. The purpose and objectives of each lesson are outlined, including a vocabulary list with definitions. The film strip should be shown after the first lesson is completed and can be shown again during your study of the jury system whenever you want to refer back to specific aspect of the visual presentation. The computer courseware allows students to individually reinforce their vocabulary and problem-solving skills and expand their knowledge of the courts and the jury system.

Each lesson includes student activities and incorporates community resources which are applicable in the classroom or at the courthouse. The student activities and handouts can be duplicated for group or individualized assignments. A separate instructional booklet accompanies the computer courseware.

The computer courseware is entitled Voir Dire Simulation. Students role play attorneys for both sides in a civil and a criminal case. They are matching wits in the jury selection process with actual prosecutors and defense attorneys in picking a jury most likely to decide in their favor. A computer manual provides background information and directions for incorporating the computer courseware into your social studies program.

Because of the strong interest in North Carolina and across the country in the problems created by drinking and driving, a Bonus Lesson has been included so that students will understand the new Safe Roads Act of 1983 and the role of the judicial system in interpreting that act. This Bonus Lesson appears as part of Lesson One and includes background information, purpose, objectives, vocabulary words and student activities.

RESOURCES

The Resources section of the teacher's guide includes a bibliography of books and magazine articles which can be incorporated into your study of the contemporary issues and comparative judicial systems. A page of instructions for effective use of resource people is included. These resources can be utilized for student activities, extra credit research, and expanded studies on the jury system. Computer Voir Dire Simulation questions, and charts of the court systems of North Carolina and the People's Republic of China are included.

CONCLUSION

This five-part teaching package on the contemporary issues and comparative judicial systems is available to all North Carolina public, private and parochial school systems through the generous support of the North Carolina Administrative Office of the Courts, Phi Alpha Delta Law Fraternity International and the North Carolina Governor's Crime Commission. For additional information, please contact the Social Studies Department of the North Carolina Department of Public Instruction or the Administrative Office of the Courts in Raleigh, North Carolina.

LESSON ONE

CONTEMPORARY ISSUES CONFRONTING THE JURY SYSTEM

BACKGROUND INFORMATION:

Trial by jury, as guaranteed in the United States and North Carolina Constitutions in both criminal and civil cases is a fundamental element in the American concept of justice. It is one of the oldest and least controversial guarantees enjoyed by Americans. The purpose of the American jury is to preserve individual liberty by entrusting an accused's fate to his fellow citizens.

The popular conception is that this purpose is served by a body composed of twelve citizens who reach a unanimous verdict on the guilt or innocence of one charged with a crime. (Henry Campen, Jr., "Tampering with the American Jury System: Where Will It Lead Us," American University, 1977.) However, in the last fourteen years, the U. S. Supreme Court has allowed states to reduce the jury's size and to abolish the unanimous verdict.

Changes in American society have created new demands for justice which may not be met by traditional jury trials. Increases in the volume of civil and criminal trials have clogged the court system and placed unprecedented strains on the ability of the jury to dispense high quality justice (Reid Hastie, Inside the Jury, Harvard University Press, Cambridge, MA, 1983). There have been dramatic increases in the length and complexity of trials.

The question becomes not what purpose the jury is to serve, but how it is to be served. Does a jury comprised of less than twelve violate the citizen's right to trial by jury in a criminal case? Is that right compromised by a less than unanimous verdict? These questions will be explored along with the issue of what evidence should be heard or seen by a jury. Decisions rendered by the Supreme Court in the spring 1984 term could have a significant impact on what information is presented to the jury by the prosecutor. These decisions affect the long standing Exclusionary Rule which provides that evidence obtained in violation of citizens' rights cannot be used as evidence in court. Decisions on the Miranda Rule (which requires that a criminal defendant be advised of his rights upon arrest) also affect what the jury will hear when it weighs the facts to determine guilt or innocence. Another issue which has not been tested for its constitutionality represents a procedural change in how cases are heard by juries. In an effort to reduce backlogs, some state courts video-tape the testimony before it is presented to a jury. The judge edits the tapes so the jury only sees and hears what it is to consider in rendering a decision. The issues of size, unanimity, admissible evidence and trial procedures are all having an impact on the guarantee of trial by jury afforded citizens in this country.

These four issues will be explored by looking at the rationale behind the pertinent Supreme Court rulings and administrative decisions. Were the decisions for change the result of legal arguments, historical arguments, functional reasons or behaviorial arguments? For example, did the authors of the United States and North Carolina Constitutions eliminate reference to unanimity because they considered unanimity to be synonymous with the concept of trial by jury or because they did not want to restrict the form of the jury to that which existed in 1789? Will changes in size and juror voting requirements affect the behavior of the jurors? If these changes do affect behavior, do they interfere with the purpose of the jury, as outlined above? Does the jury function in the same manner as was intended by our forefathers, or is it affected because fewer people are representing the community or that the minority viewpoint cannot cause a hung jury?

We will now take a brief look at the history of the jury with regard to the two issues of size and vote. The 1970's may well be remembered as the decade in which we almost lost the jury. The institution of trial by jury came to this continent as part of the general transfer of the English legal system to the colonies. For nearly 400 years, Americans have regarded the common law trial by jury as one of the bulwarks of our liberty. During this period there has been essentially no disagreement that trial by jury meant a body of twelve deciding unanimously. (Peter W. Sperlich, "And Then There Were Six: The Decline of the American Jury," Judicature, Chicago, Ill., Jan. 1980).

Foundation of the Right to Jury Trial

The foundation for the right of trial by jury in criminal cases is the constitutional guarantee in the Sixth Amendment. However, this guarantee is abstract and contains no reference to the proper size, decision rule, or selection procedure. The following "roots" of the jury system will help establish its historical perspective.

> Magna Charta (1215), Cl. 39. No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

Art. III, Sec. 2, Cl. 3, United States Constitution (1791). The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury...

Sixth Amendment, United States Constitution (1791). In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law...

Seventh Amendment, United States Constitution (1791). In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

Fifth Amendment, United States Constitution (1791) [Grand Jury]. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...

Fourteenth Amendment, Section 1, United States Constitution (1868). All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

There is considerable variety among the states in jury procedures for criminal and civil trials. Jury size ranges from six members to twelve members and decision rules range from unanimous, which is required in all states for six member juries, to a two-thirds majority (See case listings and summaries below.) Thus, a lack of specificity in the constitutional foundation has led to variability and controversy concerning the form of the jury. In North Carolina, a defendant cannot waive his right to a criminal jury trial in superior court. Criminal trials are heard by twelve person juries that are required to reach unanimous verdicts. However, six person jury trials are allowed in civil cases in North Carolina. Federal courts still require unanimous twelve person juries in criminal cases.

The concept of citizen participation in the judicial process goes back 4,000 years and is rooted in Egypt. However, the issues of size and decision rules have not been consistent throughout history. There has been enormous diversity across jurisdictions and historical periods. The ancient Egyptians had a prototype jury. It was called a "Kenbet" and was used to decide cases involving minor charges against workmen. The Kenbet had eight members, four from each side of the Nile, and was presided over by a fellow workman. This jury may have been transmitted to Greece by Mycenean traders who had trade missions in Egypt about the 14th century B.C. The early Greek juries often included six members, but at some points in Greek history, such as the trial of Socrates for corrupting the youth of Athens, the total reached as high as 501. (Inside the Jury, p. 2). The unanimous decision rule that is required in most criminal trials is thought to have originated in a British practice of the 14th century called "afforcement," which involved starting with a jury of twelve and adding jurors until a majority of at least twelve could agree on a verdict. Like the requirement that juries consist of twelve men, the requirement of unanimity arose during the Middle Ages and had become an accepted feature of the common law jury by the 18th century.

The right to trial by jury in North Carolina was incorporated into the Fundamental Constitutions of Carolina in 1669. It stated that "every jury shall consist of twelve men and it shall not be necessary they should all agree; but the verdict shall be according to the consent of the majority." North Carolina changed the decision rule from majority to unanimous over 100 years later, and this standard remains today. (See Unit 1 for additional North Carolina historical information on the jury system).

Although the right to trial by jury was enshrined in the Magna Charta in England in 1215, there is today in the United States an uncertainty concerning the proper form and function of trial by jury. In a society where the state derives its legitimacy from the consent of the governed, the jury serves the same intangible purpose it served in 13th century England: to express as closely as possible the will of the community, to embody shared concepts of justice.

> In a self-governing society, the jury serves not only a symbolic, but also a pedagogical function. It is the primary institution of government that most directly requires the attention and participation of large numbers of citizens in a direct decision-making role. This involvement in the judicial process is meant to foster civic responsibility and respect for the law. I. R. Kaufman, Judge, U. S. Court of Appeals, Second Circuit.

Until the early 1970's the twelve person jury and unanimous verdict were considered fixed features of the judicial process in most American jurisdictions. Then, in a series of decisions, the U. S. Supreme Court upheld the constitutionality of six person juries and verdicts reflecting a substantial majority such as 9-3 or 10-2 decisions. How did these changes affect the decision-making process and the representativeness of juries?

Review Of Cases

In order to understand the effect of these decisions on the historical and constitutional right to trial by jury, we will first review the major U. S. Supreme Court decisions that have impacted on the jury, and then look at these changes in light of the function and behavior of the jury. Six cases will be summarized and then viewed in light of scientific studies focusing on the issues raised in these decisions.

1. Williams v. Florida, 399 U.S. 78 (1970). The defendant was convicted of robbery by a jury of six and sentenced to life in prison. His motion for a jury of twelve had been denied. The Supreme Court ruled that the Sixth Amendment of the U. S. Constitution does not require a twelve person jury in criminal trials in state courts, although it does require twelve members in the federal courts. The opinion stated that the purpose of the jury is to interpose the community between the state and the defendant. The size of the jury is not fundamental.

In analyzing the problem, the Supreme Court looked at the origins of the twelve person jury. The Court noted that the number twelve became a fixture at common law some time in the 14th century. The Court attributed its rise to a combination of mystic and religious factors, and its longevity to a mixture of sentiment and tradition.

Looking at the significance of the number twelve in religious experiences, Justice Byron White noted the twelve tribes of Israel, twelve patriarches, twelve stones, twelve officers of Solomon, and the law as laid down by Morgan of Gla-Morgan. He was an ancient King of Wales who in 725 A.D. decreed, "As Christ and his twelve apostles were finally to judge the world, so human tribunals should be composed of the King and twelve wise men."

However, Justice White went on to write that "the fact that the jury at common law was composed of precisely twelve is a historical accident, unnecessary to affect the purposes of the jury system and wholly without significance except to mystics. The twelve man requirement cannot be regarded as an indispensable component of the Sixth Amendment."

2. Colgrove v. Batten, 413 U.S. 149 (1973). The Court reinforced its decision in Williams by upholding the six person jury in civil cases. The court held that the quality of

performance of the jury was not related to its size. With these cases the Court removed the traditional twelve person jury right in criminal (Sixth Amendment) and civil (Seventh Amendment) cases.

3. Johnson v. Louisiana, 406 U.S. 356 (1972).

4. Apodaca v. Oregon 406 U.S. 404 (1972). These two cases established the principle that nonunanimous verdicts did not violate the right to trial by jury. The Court restated the position taken in Williams that the number necessary for a verdict, like the size of the jury, is a historical accident. The Court ruled that the jury verdict was not invalid because some members of the jury dissented.

The Court held that lack of unanimity alone did not establish reasonable doubt about a person's guilt. The Court maintained that there was no reason to assume that a majority of the jury "would deprive a man of his liberty on the basis of prejudice when a minority is presenting a reasonable argument in favor of acquittal." Apodaca

5. Ballew v. Georgia, 435 U.S. 223 (19[illegible]). The court ruled that the purpose and the function of the jury is impaired if the number on the jury is less than six. It concluded that the right to trial by jury is denied if there are five members on the jury. The Court acknowledged that there is no clear line between six members and five, but concluded that studies raised doubts about the representativeness of a five person jury.

6. Burch v. Louisiana, 99 S.Ct. 1623 (1979). The Court ruled that a nonunanimous verdict from a jury of six violated the Sixth Amendment right of trial by jury. The Court said lines have to be drawn somewhere, or else the substance of a jury trial guarantee would be eroded entirely. In this case five out of six, or eighty-three percent voted to convict.

Issues Confronting the Jury System

1. Size and Unanimity: twelve person, unanimous verdict juries are now required only in federal criminal courts. Majority verdicts have been averted, so far, by the vote of a single justice. (Judicature, Dec.-Jan. 1980, p. 265) The precedent for federal criminal jury trials was established in 1898. In Thompson vs. Utah, 170 U.S. 343, (1898), the Court stated that the Sixth Amendment requires a twelve member jury in all criminal prosecutions in federal courts. Historically, the case is interesting since the crime in the case was committed before Utah became a state; therefore, federal law applied. The Court held that under the Sixth Amendment the jury was "constituted, as it was at common law, of twelve persons, neither more nor less."

The American Bar Association recommends the following standards (Standards Relating to Juror Use and Management, Feb., 1983, Judicial Administration Division, Judge James J. Richards, Chairman).

Standard 17: JURY SIZE AND UNANIMITY OF VERDICT

(a) Juries in criminal cases should consists of
  (i) twelve persons if a penalty of confinement for more than six months may be imposed upon conviction;

  (ii) at least six persons if the maximum period of confinement that may be imposed upon conviction is six months or fewer.

A Unanimous Decision Should Be Required For A Verdict In All Criminal Cases Heard By A Jury.

(b) Juries in civil cases should consist of no fewer than six and no more than twelve persons. It is acceptable to have either unanimous or nonunanimous verdicts in civil cases; provided however that a civil jury should not be authorized to return a verdict which is concurred in by less than three quarters of its members.

Examining the meaning of trial by jury in Patton v. United States, 281 U.S. 276 (1930) the Court said "that it means a trial by jury, as understood and applied at common law, and includes all the essential elements as they were recognized in this country and England when the Constitution was adopted, is not open to question. Those elements were: (1) that the jury should consist of twelve men, neither more nor less; (2) that the trial should be in the presence and under the superintendence of a judge having power to instruct them as to the law and advise them in respect to the facts; and (3) that the verdict should be unanimous." It should be noted that only seven years after that latter decision, the Supreme Court started to change its mind about what constituted trial by jury as guaranteed in the Sixth and Seventh Amendments.

Studies have been conducted regarding both the effect of the change in size requirements and the decision-making requirements. In a study by Robert Foss reported in Psychology Today July 1981, it was found that unanimous juries were more opinionated and contentious than quorum juries. He used 28 volunteer juries; 14 had to reach unanimous verdicts and 14 needed 10 of twelve to concur. Of the latter, all juries reached verdicts, but of the unanimous twelve person juries, only one-half reached verdicts. In analyzing the study, Professor Foss concluded that jurors who would otherwise insist on their view do not because they lack the power to hang the jury. Secondly, the sharp opposition is removed in a quorum verdict and thus there is more impetus to reach a verdict.

In other studies (Michael Saks, Jury Verdict, Lexington, MA, 1983) unanimous juries in comparison to quorum juries, deliberate longer, are more likely to be hung, divide the communication more equally and when convicting are more certain of the defendant's guilt. Quorum juries display better recall of arguments and more (but not necessarily better divided) communication. This study showed that there were no significant differences in the verdicts rendered by the two jury types. (Jury Verdict, pg. 105).

Studies completed in 1983 involving 69 voluntary juries drawn from regular jury pools divided the juries so that one-third were bound to the unanimity rule, another third were directed to reach a 10 of twelve majority verdict and the final third, an 8-of-twelve decision. According to the social scientists conducting the survey, significant differences in the character of decision-making under the three rules emerged. Unanimous verdicts took longest to reach, averaging almost twice as long as the 8-to-twelve group. Under the unanimous rule, jurors' comments were not only more numerous, but the debate was judged to be more serious. Minority factions participated more vigorously, and overall satisfaction of the jurors with their decision was the highest of the three models. The researchers concluded that the jury system operates best under the unanimity requirement (American Bar Association Research Journal, Chicago, Illinois, Dec. 1983).

With regard to the size of juries, studies are also mixed. According to a recent study (Judicature, Chicago, Ill., Dec.- Jan. 1980, p. 272) the quality of group performance and group productivity is higher in larger groups. Reduction in the size of the group leads to impaired fact-finding and common-sense application. Members of smaller groups are less likely to contribute to the solution of the problem, and (collectively) are less likely to overcome the biases of their members. The article claims that smaller panels produce a larger proportion of conviction errors, show more verdict inconsistency and produce less reliable decisions. However, in a study released 3 years earlier, Michael Saks (Jury Verdicts, 1977, p. 37) concluded that studies have shown that group size did not alter the decisions made by the juries nor did it adversely effect the group process.

Nineteen states plus the District of Columbia require unanimous verdicts, whereas the other 31 allow non-unanimous decision in civil trials. Only Oregon, Montana, Texas, Oklahoma and Louisiana authorize non-unanimous decisions in both civil and criminal trials. Among those states joining North Carolina in maintaining the unanimous verdict are West Virginia, Maryland, Virginia, Tennessee, South Carolina, Alabama, Georgia and Florida. Wyoming allows non-unanimity only with the consent of both parties. Minnesota and Nebraska allow a split decision only after six hours of deliberation.

2. Exclusionary Rule: In addition to constitutional issues surrounding size and decision-making rules, a third issue affecting trial by jury involves what evidence comes before that group of citizens, be they a group of six or twelve, or bound by unanimity or quorum decision rules. The Fourth Amendment protects citizens from unreasonable searches and seizures and requires that no search warrant be issued without probable cause. Historically, the Supreme Court has ruled on violations of a citizen's constitutional rights in this area, but continued to allow such illegally obtained evidence to be presented to the jury at the trial. Boyd v. United States, 116 U.S. 616, 6. S.Ct. 524 (1886); Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359 (1949).

However, in 1961 Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961) the Supreme Court applied the Exclusionary Rule, that rule making illegally seized evidence inadmissible, in a state trial of a state offense. The Court had earlier applied the Exclusionary Rule to federal cases only. Gouled v. United States, 255 U.S. 298, 41 S.Ct. 261 (1921).

The Supreme Court decided during the summer of 1984 to allow two exceptions to the Exclusionary Rule. Jurors may now weigh evidence which was obtained illegally if it would have "inevitably" been found by legal means. Nix v. Williams, 104 S.Ct. 250 (1984). In the second case the Court ruled that the jury could hear evidence obtained through the use of an invalid search warrant where the police officer acted "in reasonable reliance on a search warrant issued in good faith." (United States v. Leon, 104 S.Ct., 3405 (1984)

3. Miranda Rule: Since Miranda v. Arizona, 384 U.S. 436 (1966), police are required to inform persons accused of a crime of the following rights before questioning begins: (1) they have the right to remain silent (2) anything they say can be used against them in court, (3) they have the right to a lawyer and to have one present while they are being questioned; and (4) if they cannot afford a lawyer, one will be appointed for them before any questioning begins.

Exceptions to this rule have also been developed by the Supreme Court. In a decision handed down July 2, 1984, the Court held that the Miranda rule "does not include questioning of a motorist detained pursuant to a routine traffic stop." Berkemer v. McCarty, 104 S.Ct. 3138 (1984). The Court held that some exceptions are allowable in order that the enforcement of the nation's traffic laws not be substantially hindered. In another case decided in June 1984, the Court ruled that evidence obtained prior to reading an alleged felony suspect his rights could be admitted in court. New York v. Quarles, 104 S.Ct. 2626 (1984). Quarles was chased by officers into a grocery store; an officer drew his gun and ordered Quarles to stop. Quarles was frisked, and an empty gun holster was found. Before reading the defendant his rights, the officer asked him where the gun was, and he answered, "It's over there." The trial court excluded the statement and the gun because Quarles had not yet been read his Miranda warnings. The Supreme Court held that the gun and the statements could be admitted on the basis of a public safety exception to the Miranda requirement. Will these exceptions open the door for more exceptions to the rule regulating what a jury can consider as evidence?

4. Technology and the Jury: Since 1970, the Court has provided the framework for major historical changes in the way juries decide cases. The issues of size, unanimity and rules of evidence may also be affected by the technology age. Picture yourself, not sitting in a jury box, but in a comfortable lounge looking at a video tape. In some state courts today presentations of the defense and prosecution--including the examination and cross-examination of witnesses are video-taped so the judge can handle more than one case at a time. After the case is presented, the judge then rules on evidence questions, such as whether certain evidence should go to the jury, or where questions should be rephrased. The judge is not present when the jury hears the case. Judges feel that one of the biggest advantages of video-taped trials is that the jury hears only what it is supposed to hear. They feel this method is better than the usual system of having the judge tell the jurors after the fact, to disregard what they have heard. What the jury sees is also controlled. Jurors can only observe what the cameraman is video-taping. For example, if the camera is focused on the witness, the jury can not observe the defendant's reaction to the testimony. Is video-taping an indirect way of controlling the jury?

CONCLUSION

There are numerous other questions that may come before the courts in the future with regard to the Sixth and Seventh Amendment rights to trial by jury in criminal and civil cases and procedure issues associated with Fourth and Fifth Amendment. Does the right to a jury of one's peers permit a defense lawyer to use jury selection procedure to exclude from the jury all members of any group he believes likely to convict his client? Can the jury selection process in a notorious murder trial be closed to the public to protect the privacy of jurors and the accused? Can a person accused of a crime demand that his or her trial be held without a jury? (In North Carolina the criminal defendant can not waive his right to trial by jury.) Should a commercial or civil suit involving a technically intricate subject, such as securities or antitrust law, be decided by a judge rather than a panel of untrained citizens? (Lower courts are split on this issue.) Can the jury weigh evidence that is admitted in alleged violation of an individual's constitutional rights under the 4th Amendment because (1) it is assumed that the police have found the evidence legally at a later time or (2) that the search warrant to obtain the evidence presented to the jury was issued in good faith?

Serving on a jury is a unique experience. The United States conducts approximately 3,000,000 jury trials per year which represent ninety percent of the world's jury trials. In very few other experiences in life will students try to make intelligent decisions without asking questions or in most cases, taking notes on what they are hearing.

This background information sets the stage for student interaction through opinion polls, role playing, mock trials, research, debates and other strategies. The following student activities will develop the jury-related issues and expand upon their relevance for students today as they prepare to participate in democracy through service on a jury in their community.

PURPOSE:

The purpose of Lesson One is to understand the changing role of the jury with regard to recent U.S. Supreme Court decisions and trial procedural changes, and relate these changes to their historical interpretation through the U.S. Constitution and Bill of Rights.

OBJECTIVES:

1. To compare the differences in verdicts resulting from juries of six and juries of twelve persons.
2. To analyze the impact on jury deliberation when only a majority vote is required to reach a verdict.
3. To discuss the North Carolina standards for jury size and decision-making rules as compared with other states and U.S. Supreme Court rulings.
4. To learn how to locate and to read one U.S. Supreme Court or North Carolina Supreme Court decision.
5. To analyze the impact of recent U.S. Supreme Court decisions on evidence that is admissible in court for consideration by a jury.

6. To debate the impact of technological changes effecting how a jury views and hears a case.

7. To develop research skills through the use of accompanying student activities.

VOCABULARY WORDS:

Hung Jury:	A jury that cannot reach a verdict based on its required decision-making rules. Some verdicts must be unanimous while others are by various degrees of majority rule.
Grand Jury:	A group of persons (in North Carolina, 18 persons) legally chosen to hear the charges and evidence against someone accused of a crime and decide whether or not there is sufficient evidence to bring the person to trial.
Exclusionary Rule:	A constitutional rule of law which provides that otherwise admissible evidence may not be used in a criminal trial if it was the product of illegal police conduct.
Miranda Rule: (warnings)	The requirement that a person receive certain warnings relating to his privilege against self-incrimination (right to remain silent) and his right to the presence and advice of an attorney before any questioning by law enforcement authorities takes place.
Majority:	A greater number; a larger number or part; or more than one/half.
Unanimity:	Complete accord or agreement. All jurors are in agreement.
Common Law:	The system of law based on court decisions instead of laws passed by a legislature or similar body. It originated in England and was later applied in the United States.
Precedent:	A court decision that sets an example to be followed in deciding similar cases. Common law, precedents were regarded as the major source of law.

VOCABULARY WORDS:

Due Process:	The constitutional procedures and rights granted to an accused person that must be followed before his or her life, liberty or property can be taken away.
Probable Cause:	Reasonable cause; the existence of sufficient facts and circumstances to cause a reasonable person to believe a crime has been committed.

STUDENT ACTIVITIES AND HANDOUTS:

1. Poll teachers and administrators in your school and determine if they favor unanimous verdicts. Ask why they responded the way they did. Write an article about your findings for your local newspaper incorporating background information gained in classroom discussions.

2. Attend a superior court trial. Divide the class into two juries of twelve each (or less if the class is smaller). When the trial is over have the two juries deliberate and come to decisions selecting one jury to reach a unanimous vote and the other a simple majority or a three-quarters vote. Discuss jointly the deliberation processes and how they differed. This exercise can be done with a mock trial in the classroom, involving students from other classes to serve as jurors.

3. Conduct the same kind of research but have each jury required to reach a unanimous verdict. However, have one a jury of six and the other a jury of twelve. Invite the local media to observe your demonstration.

4. Interview a superior court judge and ask for his/her opinion on these two issues. Should North Carolina continue to require twelve-person juries with unanimous verdicts in criminal cases? What are the pros and cons of these two issues?

5. The following individualized classroom activities offer a variety of teaching strategies that reinforce the background information and vocabulary words of this lesson.

STUDENT ACTIVITY

TITLE: Why do we have juries?

Instructions: Consider the following reasons that are given to explain why we have juries. Place the letter of each reason on one of the lines below according to how important the reason is to you. Each reason should be placed on a different line.

A. To weigh evidence in order to decide if a defendant is guilty or not guilty (or liable or not liable)

B. To prevent oppression by the government

C. To increase the public's acceptance of legal decisions

D. To allow for the expression of the conscience of the community so that laws are not applied rigidly

E. To make sure that both popular and unpopular views are expressed in legal decisions

F. To assure that defendants are judged by an impartial group of their peers

_______ _______ _______ _______ _______ _______

Most important reason — Least important reason

Classroom Procedure:

1. Individual student approach

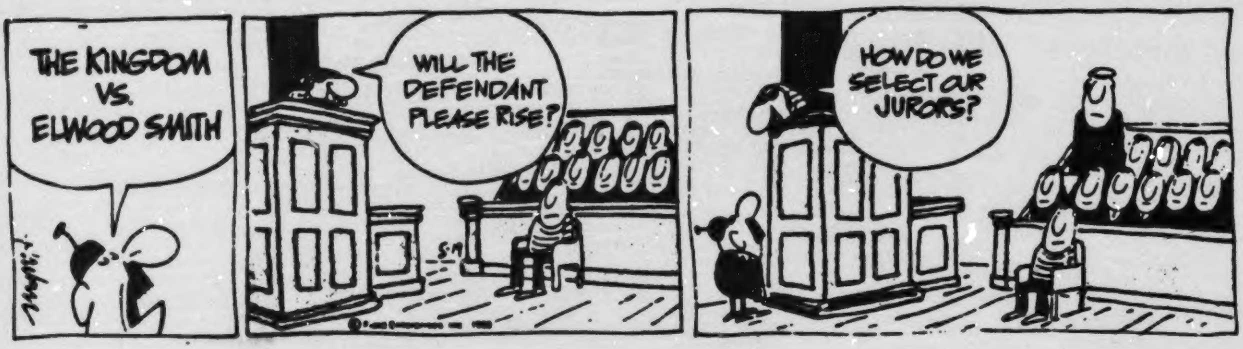
   a. Give the above exercise to students. Have each complete it individually.
   b. Obtain a class consensus by a show of hands for each of the six responses.
   c. Discuss and analyze the results. Provide an opportunity for individual students to explain reasons for their choices.

2. Group activity approach

   a. Write the letters A - F on individual cards and place them evenly around the classroom.
   b. Ask the students to read the exercise and then to stand by the letter that best reflects what they consider to be the most important reason for having juries.
   c. Allow each small group five to ten minutes to discuss their reasons for selecting a particular choice. Ask each group to pick a spokesperson to summarize the group's view to the rest of the class.
   d. After each group has expressed its view, allow for questions across groups and allow students to change groups, if they have been persuaded by another group's reasoning.

STUDENT ACTIVITY

TITLE: Using Cartoons to Teach About Our Jury System


THE KINGDOM VS. ELWOOD SMITH
WILL THE DEFENDANT PLEASE RISE?
HOW DO WE SELECT OUR JURORS?

1. What's the point of this cartoon?

2. How do we select jurors in our state?

3. Is our county using the one day/one trial jury system?

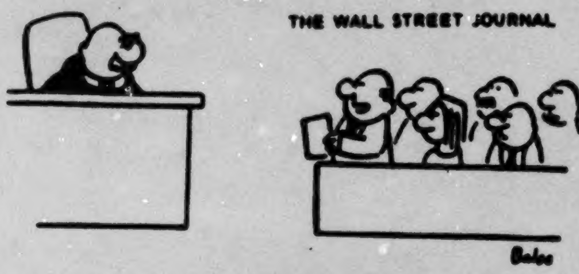
4. If yes, how long does a juror have to serve?

5. If yes, are doctors, teachers, judges and parents with small children exempt from jury duty?

6. What do you think it means to have a jury of your peers?

7. Find out what the Supreme Court says it means to have a jury of your peers. Clue: Glasser vs. United States, 315 U.S. 60, 62 S. Ct. 457 (1942).

Prepared by the Law-Related Education Program of the Massachusetts District Court Department, Salem, MA, 1984.



THE WALL STREET JOURNAL

"We've decided that he's probably guilty, but that we should let bygones be bygones."

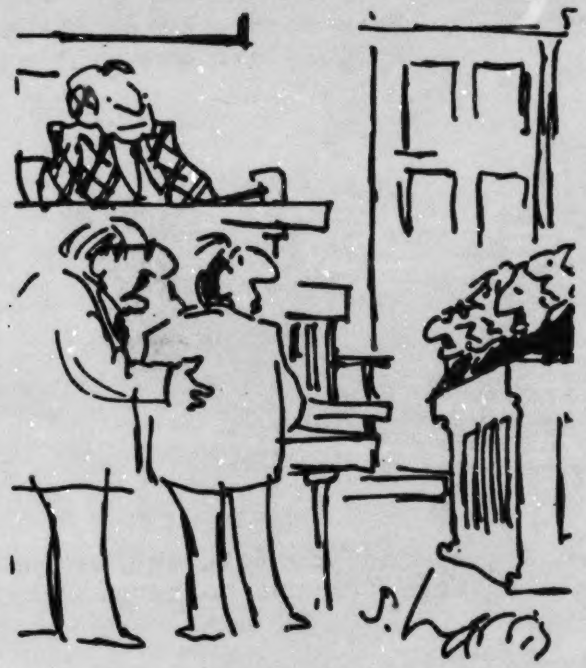
1. What do you think the judge in this cartoon will say to the jury?

2. What would you do if you were on a jury and you felt the defendant was guilty, but that the typical sentence for the particular crime was too severe?

3. In our state, what is the role of the jury? What is the role of the judge?

Extra credit: Invite a judge to your class. Ask him or her to talk to you as though you were a jury about to decide a defendant's guilty or not guilty status on a murder case.

Prepared by the Law-Related Education Program of the Massachusetts District Court Department, Salem, MA, 1984.



"All I know is they're trying a new system—twelve judges and one juror."

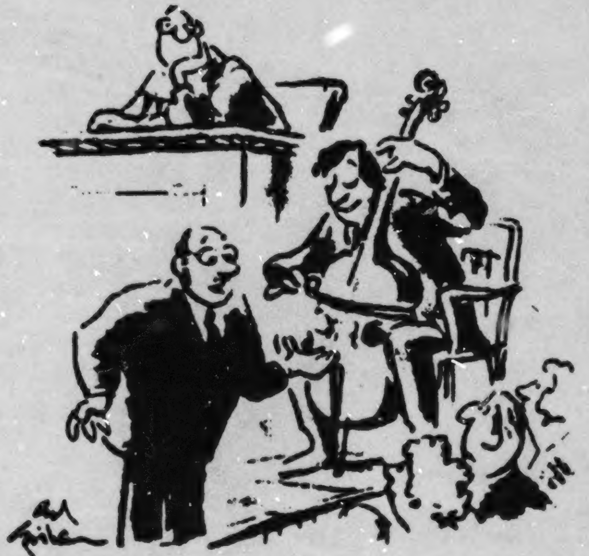
1. Do you think judges should be allowed to sit on juries?

2. Would a jury of twelve judges be considered a jury of your peers?

xtra credit: Talk with a judge and ask him or her if the idea of Sitting on a jury is an appealing one.

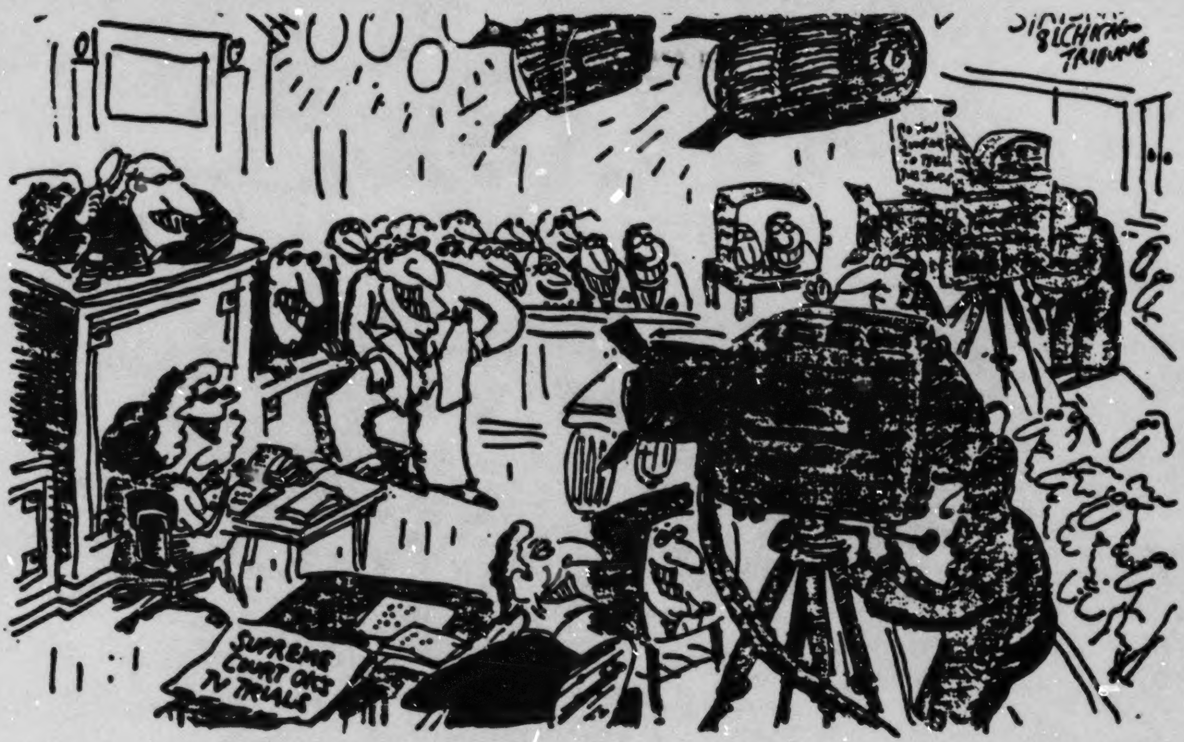
If you were on a jury, would you be able to tell if a witness was lying or telling the truth?

What would you look for to help you make up your mind about who was or wasn't telling the truth?



"Now I ask you, ladies and gentlemen: Could a witness who plays like that *lie*?"

Prepared by the Law-Related Education
Program of the Massachusetts District Court Department, Salem, MA, 1984


'81 CHICAGO TRIBUNE
SUPREME COURT OKS TV TRIALS

1. What is the message of this cartoon?

2. How do you feel about television coverage of trials?

3. How would you feel if you were a defendant? A juror? The judge? A witness?

Extra credit: Find out if the Supreme Court has taken a position on the televising of trials.

Prepared by the Law-Related Education Program of the Massachusetts District Court Department, Salem, MA, 1984.

STUDENT ACTIVITY

TITLE: WHAT SHOULD THE JURY HEAR AND SEE? A LOOK AT RECENT CHANGES

Note: What evidence should come before the court? And how should jurors view that evidence? These two questions are being addressed in courts across the country due to decisions of the spring 1984 term of the U.S. Supreme Court, and the advent of video-taping jury trials so that the jury never hears evidence that has been ruled inadmissible in open court. The following activities are designed to help students understand these changes and their implications on their potential role as jurors.

BACKGROUND INFORMATION:

The spring 1984 term of the U.S. Supreme Court saw a shift in the interpretation of what evidence could come before the jury.

In 1914 that Court "invented" a rule to exclude evidence obtained illegally from any federal trial. In 1961 this rule was extended to the states. The Supreme Court decided on July 5, 1984 that a defective search warrant was not reason enough to exclude evidence found by the police. United States v. Leon, 104 S.Ct. 3405 (1984). In an earlier decision rendered June 11, 1984 the Court held that evidence illegally obtained that would have ultimately or inevitably been discovered by legal means could be admitted as evidence. Nix v. Williams, 104 S.Ct. 2501 (1984).

Justice is a tug of war. Do we risk condeming a few innocent people in order to be sure we get the guilty person? Or do we take a chance on letting some of the guilty go free, to be sure we do not abuse the rights of the innocent by mistake? Come back to these questions after your students have reviewed the summary of the historical development of the exclusionary rule and the Miranda rule, both of which deal with what information can come before a jury in open court.

The founders of this country experienced firsthand the abuses of government power. Agents of the British crown had broad authority to invade colonists' homes and take their property. Arrests were made on mere suspicion with little or no evidence to back them up. The accused were presumed to be guilty and had few, if any, rights.

Those abuses helped spur rebellion and led to the Bill of Rights, which asserts the right of jury trial, and limits searches, seizures and arrests.

"But in reality American law enforcement has never matched our constitutional principles. At their worst, police practices have been little short of authorized thuggery: suspects beaten into confession; suspicious people stopped on the street; homes ransacked in a style King George III's agents would have applauded." ("The Debate; Illegal Evidence," USA Today, July 9, 1984, p. 10, Sec. A)

Some people feel that the courts should admit everything that may be relevant to the charges. "The jury, entrusted with the ultimate decision, should be able to evaluate whatever testimony or material evidence is available. The primary mission of the courts is to find truth. Trying to discipline the police should not replace finding the defendant guilty or innocent by weighing all the evidence--however obtained," said Ernest Van Den Haag, A Fordham University professor of jurisprudence and public policy. (Ibid.).

We are the only nation in the world with an exclusionary rule. We also have the world's highest crime rate, according to Joseph McNamara, San Jose (CA) Chief of Police, who feels that "letting criminals go free does not punish illegal police methods. The illegal methods' are usually a harried cop's wrong guess on what the court wants. In real cases of misconduct, police can be sued, prosecuted or fired."

McNamara went on to say, "Justice is defined as giving every person his due. When we withhold reliable evidence from a judge and jury, they are unable to determine the facts--and we defeat justice."

Looking at the other side of the picture, when the rights of any citizen are violated, the rights of all citizens are violated. No law-abiding citizen is comfortable with the notion that some criminals may go free. But every citizen should be uncomfortable with the idea that an unintentional violation of the Constitution does not count.

"We can never let our desire to put criminals behind bars leave us less secure against the abuse of power. Justice will always be a tug of war. But we must not allow the rights of all to be trampled in the pulling and hauling." (Ibid.)

Following are summaries of major U.S. Supreme Court cases involving the Exclusionary Rule and the Miranda Rule. Students can look at the issues raised regarding what the jury should be allowed to hear and see as evidence in open court from a historical perspective and from a contemporary perspective. What factors influenced the change in the Supreme Court's interpretation of the Exclusionary Rule and the Miranda Rule. Should the jury hear all evidence regardless of whether it is illegally obtained?

DIRECTIONS:

1. Review the above background information with your students. Conduct a class discussion on the issues raised.

2. Ask students to review the case summaries that follow. If they wish to read a complete opinion, see if your pubic library has the Supreme Court Reporter or the United States Reports. Use the citations given here to locate the cases. A lawyer or a judge can also help you locate these opinions.

3. Conduct a class debate after you have asked students how they would decide the issues if they were sitting on the Supreme Court.

4. If time permits, conduct a Moot Court (appellate court) hearing. Student teams for each side should prepare their cases with the help of resource persons (judges, lawyers, law students); the rest of the class can "sit" as an appellate court and render individual or consensus decisions through written 2-page decisions and voting following the arguments. Students can write both majority and minority opinions. If you choose to conduct a Moot Court, you can build on the issues raised in the latest Supreme Court decisions, but develop your own fact situations with variations from the original cases. By changing the fact situations, develop "what if" questions for class discussions.

EXCLUSIONARY RULE: Historical Case Summary

Note: The following constitutional and case information is provided for students who wish to expand their research skills through the use of cases. These cases can be used to assist students who are preparing debates and discussion topics relating to the changes in the Exclusionary Rule as a result of recent Court decisions. Lawyers and judges are excellent resource people to assist students in their research.

Fourth Amendment (ratified December 15, 1791)

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants be issued, but upon probable cause, supported by oath or affirmation, and particuarly describing the place to be searched, and the persons or things to be searched."

Fourteenth Amendment (ratified July 9, 1868)

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fifth Amendment (ratified December 15, 1791)

"No person...shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524 (1886)

In this case the Supreme Court ruled that a search and/or seizure was carried out in violation of a person's constitutional rights. In its opinion, the Court wrote that the Fourth Amendment was primarily a reaction to the evils associated with the General Warrant which was used in England (like the Writs of Assistance in the Colonies). It was intended to protect the "sanctity of a man's home and the privacies of life," from searches under unchecked general authority. This case served to deter unreasonable searches, searches that violate the Fourth Amendment. However, this ruling did not bar the use of evidence obtained in violation of the Fourth Amendment in criminal trials.

Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341(1914)

Freemont Weeks' was arrested without a warrant, his home was ransacked by federal marshals and papers, books, and personal effects were taken. In Weeks, the Court held that the defendant could petition for the return of property secured through an illegal search and seizure conducted by federal authorities. However, the Court also ruled that this decision applied only to the federal government and its agents.

Gouled v. United States, 255 U.S. 298, 41 S.Ct. 261 (1921)

The Court ruled that evidence taken in a secret search was unconstitutionally obtained, because the secret search was against the will of Gouled, violating the Fourth Amendment. However, the Court expanded the Exclusionary Rule, and barred the use of illegally obtained evidence in a federal trial. The Court ruled that a secret search was against the will of the defendant, and that using such evidence in a trial "is compelling the defendant to be a witness against himself." This violates the Fifth Amendment. The Court decided that "the Rule should be used to secure the ends of justice."

Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359 (1949)

The Supreme Court ruled that a conviction by a state court of a state offense does not deny the "due process of law" required by the Fourteenth Amendment. Evidence inadmissible in a federal court is admissible in a state court because the exclusion of illegal evidence from federal trials serves to deter illegal federal searches and seizures. "The public opinion of a community can far more effectively be exerted against oppressive conduct on the part of the police than can binding the Weeks Doctrine upon the states."

Elkins v. United States, 364 U.S. 206, 80 S.Ct. 1430 (1960)

The Supreme Court wrote in its opinion that "the [Exclusionary] Rule is calculated to prevent. Its purpose is to deter - to compel respect for the constitutional guarantee in the only effectively available way - by removing the incentive to disregard it."

In some cases "the criminal will go free because the constable has blundered" (People v. Defore, 242 N.Y. at 21, 150 N.E. at 587), and some evil will result, but there is another consideration - the imperative of judicial integrity" (Elkins, 364 at 1437). In 1960, the Court valued judicial integrity over the possibility of a criminal going free.

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961)

By 1961, many states had decided to implement the Exclusionary Rule, thereby making illegally seized evidence inadmissible in a state trial. The Court reversed the Wolf ruling and applied the Exclusionary Rule to the states. The Court wrote, "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." The Court used the Fourteenth Amendment to extend this Rule and to rid the judiciary of a "double standard," and the need to decide admissibility of evidence. Only legal evidence could now be admitted. The Court held that the Exclusionary Rule is an essential part of both the Fourth and Fourteenth Amendments. One Justice wrote that "the Wolf decision was the voice of the majority, but not the voice of reason or principle."

United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613 (1974)

The Supreme Court held that a witness summoned to appear and testify before a grand jury may not refuse to answer questions on the ground that they are based on evidence from illegal search and seizure. The Court wrote, "The Exclusionary Rule is a judicially created remedy designed to safeguard Fourth Amendment rights through deterrent effect, rather than a personal constitutional right...[A]llowing a grand jury witness to invoke the Exclusionary Rule would unduly interfere with the effective discharge of the grand jury's duties; a grand jury's power must be broad if it is to serve its investigative purpose."

Rakas v. Illinois, 439 U.S. 128 (1978)

A gun was seized from a car by police without a warrant. The passengers of the car claimed to own neither the car nor the gun. Therefore, the Court ruled that the defendants had no standing to argue that their Fourth Amendment right had been violated when the gun was used as evidence against them.

"The Fourth Amendment right to be secure against unreasonable search and seizure is a personal right," wrote the Court. "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third party's premises or property has not had any of his Fourth Amendment rights infringed."

United States v. Havens, 446 U.S. 620 (1980)

The Court decided that prosecutors may use illegally obtained evidence to impeach the credibility of a witness who responds to questions on cross examination with answers that appear to be contradicted by the evidence in the government's possession.

United States v. Payner, 447 U.S. 727 (1981)

The Court reaffirmed its position that only a defendant whose Fourth Amendment rights have been denied can move to exclude illegally obtained evidence. The Court held that a federal judge lacks the power to exclude the use as evidence items taken in violation of the Fourth Amendment guarantee when the defendant is not the person whose Fourth Amendment rights have been violated. Earlier, the Court had held that if, during the course of the trial, it came to light that evidence was illegally obtained, it was the duty of the trial judge to stop the proceedings, even if the defendant did not object to the admission of the evidence. (See Gouled)

Nix v. Williams, 104 S. Ct. 2501 (1984)

Williams was arrested and charged with the murder of a ten year old girl. Williams led police to the body, but during the trial, the trial judge decided that the evidence was obtained through incriminating statements made in violation of the defendant's Sixth Amendment right to counsel. (Brewer v. Williams, 430 U.S. 387) The incriminating statements were barred under the Exclusionary Rule, but the body was admitted on the grounds that it would inevitably have been found.

The Supreme Court upheld this decision that the victim's body had been properly admitted at the second trial on the ground that it ultimately or inevitably would have been discovered even if no constitutional violation had taken place. The Court ruled that the deterrent effect of the Exclusionary Rule was far outweighed by the high social cost of letting the guilty go free.

Also, under the inevitable discovery exception established by the Court, the Justices decided that the prosecution need not prove the absence of bad faith on the part of the police. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial. Nor would suppression ensure fairness on the theory that it tends to safeguard the adversary system of justice."

United States v. Leon, 104 S. Ct. 3405 (1984)

The Fourth Amendment Exclusionary Rule should not be applied so as to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued in good faith but ultimately found to be invalid. "An examination of origin and purposes makes clear that the use of fruits of a past unlawful search or seizure works no new Fourth Amendment wrong." The question of whether the Exclusionary Rule is appropriately imposed to guarantee Fourth Amendment rights through deterrent effect must be resolved by weighing the costs and benefits of preventing the use of inherently trustworthly tangible evidence. Indiscriminate application of the Exclusionary Rule - allowing some guilty defendants to go free - may generate disrespect for the law and the administration of justice.

Application of the Exclusionary Rule should continue where a Fourth Amendment violation has been either substantial or deliberate but the balancing approach that has evolved in determining whether the Rule should be applied suggests that the Rule should be modified to permit the introduction of evidence obtained by officers reasonably relying on a warrant issued by a detached and neutral magistrate. Even assuming that the Exclusionary Rule deters some police misconduct, it can neither be expected nor applied to deter objectively reasonable police activity.

MIRANDA RULE: Historical Case Summary

Note: The following case summaries offer students an opportunity to expand their research and debating skills while gaining knowledge about protections offered individuals under the Fifth Amendment. This information can be incorporated into other suggested student activities such as "What Should the Jury Hear and See? A Look at Recent Changes." Defense attorneys, law students, prosecutors and judges can help answer student questions and assist in their research efforts.

Miranda v. Arizona, 384 U.S. 436 (1966)

This case deals with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity of procedures which assure that the individual is accorded his privilege under the Fifth Amendment of the Constitution not to be compelled to incriminate himself.

The Fifth Amendment provides that, "No person...shall be compelled to be a witness against himself."

The Court held that, "The prosecution may not use statements stemming from custodial interrogation of a defendant unless it demonstrates the use of procedural safeguards to secure the privilege against self-incrimination." Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his liberty. Procedural safeguards consist of informing the accused of the following: he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

The Miranda holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogations may be used. The gain in specificity outweighs the additional burden placed on law enforcement, based on the opinion of the Court.

Escobedo v. Illinois, 378 U.S. 478 (1964)

Law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with an attorney. Rather, they confronted him with an alleged

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accomplice who accused him of perpetrating a murder. When the defendant denied the allegation and shouted, "I didn't shoot Manuel. You did it." they handcuffed him and took him into an interrogation room. There, while handcuffed and standing, he was questioned for four hours until he confessed. During this interrogation, the police denied his request to speak to his attorney. They prevented his retained attorney, who had come to the police station, from consulting with him. At his trial, the State, over his objection, introduced the confession against him. The Court held that the statements were constitutionally inadmissible.

Orozco v. Texas, 394 U.S. 324 (1969)

The Court's ruling in Miranda was expanded. The Court decided that a person must be read the Miranda warning before interrogation, no matter where the questioning takes place. The questioning could take place at a police station, or in the defendant's bed.

Brown v. Illinois, 422 U.S. 590 (1975)

Brown was illegally arrested. He appealed his conviction on the grounds that statements made after his arrest should be inadmissible, even if he was properly advised of his rights. The Court held for Brown, ruling that legally taken statements cannot be used in court if the arrest was illegal.

Jenkins v. Anderson, 447 U.S. 231 (1980)

A defendant was charged with murder and claimed self-defense when testifying during his trial. The prosecutor told the jury that the defendant had remained silent for two weeks after the killing, neither reporting it nor turning himself in. The Court held that the prosecutor had not erred by informing the jury of the defendant's silence. The use of his silence to impeach his credibility "advances the truthfinding function of the criminal trial" and does not violate his constitutional rights.

New York v. Quarles, 104 S. Ct. 2626 (1984)

Quarles was chased by officers into a grocery store. An officer drew his gun and ordered Quarles to stop. Quarles was frisked, and an empty gun holster was found. Before reading the defendant his rights, the officer asked him where the gun was, and he answered, "It's over there." The trial court excluded the statement and the gun because Quarles had not yet been read his Miranda warnings. The Supreme Court held that the gun and statements could be admitted. "There is a public safety exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into the evidence."

"Procedural safeguards that deter a suspect from responding, and increase the possibility of fewer convictions, were deemed acceptable in Miranda in order to protect the Fifth Amendment privilege against compulsory self-incrimination." Police officers can and will ask questions to secure public safety, and such statements resulting from these questions are admissible under the "public safety exception." The narrow exception will lessen the clarity of the Miranda rule, but it will be up to the police officers to distinguish questions to secure public safety and questions designed solely to procure testimony. The former are admissible.

Berkemer v. McCarty, 104 S. Ct. 3138 (1984)

The Court held that "a person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in Miranda regardless of the nature or severity of the offense of which he is suspected or arrested." However, the Court ruled that "custodial interrogation for the purposes of the Miranda rule does not include questioning of a motorist detained pursuant to a routine traffic stop....Adherence to the principle that all suspects must be given to Miranda warnings will not significantly hamper the efforts of the police to investigate crimes." But the Court held that some exceptions are allowable in order that the enforcement of the nation's traffic laws not be substantially hindered.

STUDENT ACTIVITY

TITLE: YES OR NO? YOU DECIDE AND DEFEND YOUR POSITION

DIRECTIONS: Below is a list of statements to which students are asked to respond "yes" or "no". If you wish to allow more variation in their answers, you can change the rules to ask them to decide from among one of the following five choices: Strongly Agree, Agree, Undecided, Disagree, Strongly Disagree. Select one or two statements that seem to generate the most controversy and student interest. Ask students who are not sure about their opinions to be judges. Ask the rest of the class to form into teams and debate the selected statement(s) as if they were arguing before an appellate court. Students should be given time to conduct their own research including soliciting statements from "expert" witnesses for inclusion in their written arguments. Each team might wish to involve a resource person, such as an attorney or appropriate court person to help with its research and presentation.

1. Our founding fathers intended the right to trial by jury to mean a jury of twelve reaching a unanimous decision.
2. A defendant should go free when one person out of twelve has reasonable doubt.
3. There is reasonable doubt of guilt in majority verdict decisions.
4. The minority hold-out voice in unanimous verdicts should not be allowed to prevent the majority from ruling.
5. A judge can decide what facts are true and what facts are false in a case much better than a jury.
6. Video-taped trials, which are edited to remove objectionable testimony and then presented to the jury, are fairer than traditional open court trials.
7. Jurors should be able to ask questions and take notes during a trial.

8. The voice of the minority is not effective when the jury can return a verdict based on the majority rule.

9. The jury cannot fulfill its purpose to represent the community if there are only six members, rather than the traditional twelve.

10. All juries should have twelve people and be required to reach unanimous verdicts.

STUDENT ACTIVITY

TITLE: DISCUSSION QUESTIONS: LET'S FACE THE ISSUES

1. What is the best size for the jury to be impartial and represent the community?

2. Would you want a unanimous jury verdict requirement if:

   a. you were the victim of the crime? Why?

   b. you were the defendant? Why?

   c. you were a legislator? Why?

   d. you were the judge? Why?

   e. you were a defense attorney? Why?

   f. you were a prosecutor? Why?

3. What is a substantial majority? ten-to-two? eight-to-four? seven-to-five?

4. Does lack of a unanimous verdict affect minority participation? How would you feel if you were the only minority juror on a majority vote jury? Would you feel that your opinion did not matter? Would you try harder to change the minds of your fellow jurors if you were on a unanimous verdict jury?

5. How do you feel about the following statements?

   Decisions regarding size and decision rules should be based on the function of the jury. It should be large enough to promote group deliberation. It should be free from outside attempts at intimidation. It should provide a fair possibility for obtaining a representative cross-section of the community. Williams v. Florida, 399 U.S. 78 (1970)

6. Do you agree with the following statement?

   The "doctrine of the conscientious juror" suggests that members of a jury will attend to and consider the well-reasoned arguments of any member and will outvote the minority only when the minority has exhausted its persuasive arguments. Apodaca v. Oregon 406 U.S. 404 (1972)

7. Do you feel debate would cease and the minority opinion, regardless of its merit, would be ignored in majority verdict juries?

8. Using smaller, non unanimous juries facilitate, expedites and reduces expenses in the administration of justice. (Apodaca) Do you feel these are critical issues when deciding what size and decisions best fulfills the purpose of a jury trial?

9. Do you feel that the minority rule the majority when a unanimous verdict is required?

10. If the essential feature of the jury is the community participation that results from the group's determination, what is the "group's determination"--majority, 3/4th, unanimous?

11. How do you feel about the following two statements?

The stubborn juror who cannot or will not be convinced of the correctness of a position taken by his fellow jurors is an unnecessary burden upon the courts.

When ten out of twelve jurors have agreed upon a verdict, in all probability they are right and the two others are unreasonable or stubborn.

STUDENT ACTIVITY

TITLE: WHAT HAPPENS DURING THE PRIVATE JURY DELIBERATIONS?

DIRECTIONS: The following true/false quiz is designed to measure student opinions and awareness levels about factors associated with the jury decision-making process. The answers are based on a 1983 study conducted among jurors who rendered verdicts in 225 criminal cases. Students can use this opinion quiz to conduct classroom debates on the pros and cons of breaking 200 years of tradition by allowing less than twelve-person jurors and less than unanimous decisions. Test these statements during your own mock trial(s). See if your student jurors react the way actual jurors did who participated in this study?

1. The jury usually decides in the direction of the initial majority polled at the beginning of deliberation?
2. Hung juries occurred only when a substantial minority faction existed at the start of deliberation.
3. Jurors perform their task in a conscientious manner.
4. Jurors participate at generally the same rate.
5. In six-person juries approximately five percent of the jurors interviewed did not participate in the deliberation.
6. Juror sex and occupational status are not correlated with their participation rates.
7. Juries required to reach unanimous decisions were more likely to reach a decision than majority decision-making juries.

8. More than twenty percent of the jurors participating in twelve-persons juries were silent during deliberation.

9. Minority faction members are more active in deliberation under unanimous rules than under majority rules.

10. Six-person juries showed a better rate of recall of evidence than members of twelve person juries.

ANSWERS: WHAT HAPPENS DURING THE PRIVATE JURY DELIBERATIONS?

Note: To assist students research issues raised during this activity, refer to the Additional Resource list at the end of this guide. "What Goes on in a Jury Deliberation," by Reid Hastie, et 1, which appears in the American Bar Association Journal, Dec. 1983, 1848 is a good starting point. Ask a lawyer to locate the issue for you if it is not available in a library near you.

1. True — The jury in roughly nine out of 10 cases decides in the direction of the initial majority.
2. True — A survey of trial judges found that 5.6% of trials resulted in deadlocked juries when unanimous verdicts were required; the rate dropped to 3.1% when majority verdicts were allowed.
3. True — More than 80% of the mock juror's discussion was judged relevant to their decisions.
4. False — Individuals involved in group discussion participate at sharply different rates with a few individuals dominating discussion. For example, three of twelve jurors typically produce more than half of the communication.
5. True — Variability in speaking rates increases as group size increases.
6. False — They are correlated with participation rates. Men speak more than women, and higher socioeconomic status jurors participate at a higher rate than lower status jurors.
7. False — Juries of twelve persons with unanimous decision rules were more likely not to reach a decision than those requiring majority verdicts.
8. True — Same reason as #5.
9. True — See if your students have an opinion on this one.
10. False — Larger juries also included more divergent viewpoints and produced more discussions.

STUDENT ACTIVITY

TITLE: A JUDGE SERVES AS A JUROR: A REAL LIFE EXPERIENCE

DIRECTIONS: The following comments are excerpts from a speech delivered by District Court Judge Arthur Sherman of Massachusetts at the American Judges' Association Annual Conference, August 24, 1983, Boston, Massachusetts. Read the following brief account of Judge Sherman's observations as a juror to your students. Discussion questions and suggested activities follow these remarks.

Edited Narrative:

In 1953 I was admitted to practice before the bar of this Commonwealth. In 1972 I was elevated to the judiciary. And, in 1981, I was chosen to serve on a jury.

Friday, September 18th 1981, I was impanelled as a member of a 12-person jury in Middlesex County, Massachusetts, at a criminal session in which the defendant was accused of breaking and entering in the nighttime with intent to commit a felony and larceny of property to the value of an excess of $100.

I personally found the judge's instructions to the jury to be clear, concise, couched in terms which I truly believed laymen could readily understand...I was obviously wrong.

There was almost a total disregard of the judge's instructions concerning consideration of those matters which had been excluded from evidence. In addition, notwithstanding the admonition of the judge that statements of counsel did not constitute evidence, there were many members of the jury panel who insisted upon discussing matters which had been alluded to in both the opening and closing arguments of counsel as if those statements constituted part of the evidence.

....Much thought ought to be given to "introductory instructions" prior to the commencement of the taking of evidence on such basics as burden of proof, inferences, excluded testimony and the statements of counsel.

My personal experience caused me to intensify and expand my "pre-trial instructions" so as to provide a road map for the jury with respect to the elements of the crimes, and the functions of the court and jury, generally.

Because of the antagonism which I personally witnessed to exist between those who were more educated and those who were less educated members of the jury panel, I stress the fact that members of the jury are each one among equals.

My jury was composed of a:

Secretary for a travel agency,
Minister,
Engineer for General Electric,
Dry wall contractor,
Medical technician for pediatrics department of a hospital,
School teacher,
Secretary for a law firm,
Nurse,
Specifications writer for architectural firm,
Computer technician,
Retired fire chief, and a
Judge.

DISCUSSION QUESTIONS:

1. Do you feel a judge should be allowed to serve as a juror? Why do you feel that way?

2. What would you do if you were a juror and another juror insisted on talking about statements you have been told to disregard? Have you been in other situations where someone "gets off the track" in a discussion?

3. How would you convince fellow jurors that "we are among equals?" Do you believe that statement by Judge Sherman is true?

ACTIVITIES:

1. Interview a trial court judge and see if he or she agrees with Judge Sherman's observations and recommendations.

2. Conduct a mock trial or visit your local superior court. Sit as jurors and conduct a deliberation following one case. See if your experience as a juror was similar to Judge Sherman's experience.

BONUS LESSON

SAFE ROADS ACT OF 1983

BACKGROUND INFORMATION:

The Safe Roads Act of 1983 was the first complete revision of the statutes regulating drinking and driving since 1937. The Act was Governor Jim Hunt's major legislative initiative for the 1983 session. The initiative began in the spring of 1983 when a Task Force on Drunken Drivers was established to study the problem caused by drunken drivers and to design improvements in the procedures used to regulate the arresting and sentencing of those drivers. After public hearings, recommendations were compiled into a single bill, the Safe Roads Act, that was passed and took effect on October 1, 1983.

The major purposes of the Act are:

1. to impose a significant punishment on every person convicted of impaired driving;
2. to restrict the driving of every person convicted of impaired driving;
3. to reduce the discretion of judges in sentencing and reducing charges, so that all persons are treated equally;
4. to take alcohol out of the high schools and to discourage young people from drinking and driving.

The Act establishes a new crime of impaired driving. The crime of impaired driving occurs if a person drives a vehicle on a public roadway while under the influence of an impairing substance and/or after consuming enough alcohol to have a .10 alcohol concentration. The alcohol concentration is found through a chemical analysis, either a breath or blood test. If the level of concentration is .10 grams of alcohol per 100 milliliter (ml) of blood or per 210 liter (l) of breath, the alcohol concentration has surpassed the legal limit. An important part of this new offense is that it cannot be reduced in order to get an easier conviction for a lesser offense. Prosecutors that reduce a charge must detail their reasons in writing and must enter them in the record of the case.

The Act establishes the punishment for persons convicted of impaired driving. The judge's discretion in sentencing is restricted because the Act details mandatory and specific punishments. It establishes five levels of punishment and requires the judge to support his decision to impose a particular level. It increases the minimum punishments and results in more active jail sentences being served. The Act spells out in detail the prosecutor's duty to present evidence. Prior impaired driving convictions and the alcohol concentration level can be introduced as evidence to help the judge decide a sentence.

In imposing the sentence, the judge must first determine if grossly aggravating, aggravating or mitigating factors are present.

Grossly aggravating factors are:

1. prior convictions for impaired driving,
2. driving by defendant while license is revoked, and
3. serious injury caused by the defendant while driving impaired.

Some aggravating factors are:

1. an alcohol concentration of .20 or more,
2. reckless or dangerous driving,
3. property damage or injury caused by driver,
4. conviction of speeding to elude arrest or conviction of other traffic offenses at time, and
5. any other factor that aggravates the seriousness of the offense.

Some mitigating factors include:

1. an alcohol concentration of .11 or less,
2. safe driving even while driving impaired,
3. safe driving record,
4. impairment caused by a prescription drug used according to directions, and
5. another factor that lessens the seriousness of the offense.

After the judge determines which levels are present, he decides the level of punishment based upon the guidelines given in the Act. (See the chart at the end of the lesson.)

In addition to the new offense of impaired driving, the Act rewrites and creates related offenses and sets the punishments. The offenses range from felony-death by vehicle, punishable by up to five years in prison or a fine or both, to underage purchase of beer, punishable by up to two years in prison or a fine or both. As with all other offenses included in this Act, the punishment includes a mandatory license revocation.

The Act relies on the implied consent law. Any person who drives a vehicle on a public roadway gives consent to a chemical analysis for the purpose of determining his alcohol concentration. The tests are administered by the charging officer having reasonable grounds to believe the person is driving while impaired. If the person refuses to take the tests, he receives an automatic license revocation. The Act authorizes law enforcement agencies to set up roadblocks to check for impaired drivers, as long as the roadblocks are not arbitrary.

The Act also raises the age to buy and possess beer and wine to nineteen. The legal age to buy liquor remains twenty-one. If a provisional licensee (sixteen or seventeen) is convicted of impaired driving or refuses to take a chemical test, the Act mandates that the offender will have his license revoked until age eighteen. However, this part of the Act was declared unconstitutional in July 1984, on grounds that it constituted age discrimination; the issue will probably be appealed because the youthful offenders are provisional licensees, and the State can show how this group has an disproportionately large accident-to-miles-driven ratio.

The statute provides a one-year license revocation if:

1. an underage person attempts or does purchase an alcoholic beverage; or
2. an underage person aids an attempt or purchase of an alcoholic beverage; or
3. an underage person attempts, purchases, or possesses alcoholic beverages by using or attempting to use a fraudulent driver's license or other I.D.; or
4. another person lends his I.D. for the purpose of the illegal purchase of alcohol.

Attorney General Rufus Edmisten sued to clarify the Safe Roads Act in an attempt to consolidate the civil and criminal challenges to the law. However, the suit was dismissed in July 1984, by the superior court for lack of jurisdiction. The Act will be clarified on a case-by-case basis as appeals are dealt with by the courts. Questions that could be decided include:

1. the use of an affidavit of the chemical analyst certifying the alcohol concentration; and
2. the due process of the automatic ten day revocation for an alcohol concentration of .10 or more.

The Safe Roads Act was passed during a period of increased national attention to the problem of drunken driving. Congress passed a bill that could raise the drinking age to twenty-one in every state by 1987. States that do not comply by the deadline will have 5% of their federal highway funds withheld; 10% of their funds will be withheld if non-compliance continues until 1988. Sponsors said the law was needed because many of the accidents that kill and injure teenagers every year take place along "slaughter alleys," roads that transport young drivers to and from states with a lower drinking age. Opponents argue that raising the age was the wrong thing to do. Almost all opponents to a raised drinking age stress education and not a higher age restriction as the cure for the drinking and driving problem.

Other countries have very strict rules. For example, a Swedish driver found to have a an alcohol concentration of .05 (about two drinks for a 150 pound man) will go to prison for six months. If the concentration is .15 or higher, he will go to jail for a year. The result is that Sweden no longer has a major problem with drunk drivers.

Although the need for education is stressed, as yet, no national educational program exists in the United States.

PURPOSE: The purpose of this lesson is to inform the students of the issues surrounding the Safe Roads Act of 1983.

OBJECTIVES:

1. To inform students of the laws regarding impaired driving and their punishments.
2. To inform students of how the laws especially apply to provisional licensees.
3. To discourage, through education, students from drinking and driving.

VOCABULARY WORDS:

1. under the influence or impaired - one has appreciable impairment of mental and/or bodily function(s).
2. provisional licensee - a driver that is licensed by the state but who is not yet 18 years old. Drivers

sixteen and seventeen years of age have extra restrictions applied to their driving. For example, upon a second moving violation, a provisional licensee has his license revoked. Another driver just accumulates points.

3. chemical analysis - a test done to determine the concentration of alcohol in either 100 milliliters of blood or 210 liters of breath.

4. aggravating factors - factors found by the judge when sentencing that increase the seriousness of the offense.

5. mitigating factors - factors found by the judge when sentencing that decrease the seriousness of the offense.

6. non-arbitrary roadblock - a stop check of cars or drivers. An arbitrary roadblock is unconstitutional.

7. due process - the system and order of justice. No one may be convicted without due process of law.

8. punitive damages - fines paid to the wronged party by the person that caused the wrong.

9. implied consent - by driving on a public roadway, a driver consents to undergo a test to determine alcohol concentration if there is cause to suspect impairment. Refusal to submit to the test is a violation of the law.

10. affidavit - a sworn and signed statement. This document is admissible evidence in court. An affidavit is used by the state to present as evidence the results of a chemical analysis.

11. legally drunk - you are past the legal limit if you have an alcohol concentration of .10 as determined in chemical analysis.

12. active jail sentence - time served while actually in custody or imprisoned. A suspended jail sentence is served outside of a jail.

STUDENT ACTIVITIES:

1. Brainstorming

Almost all opponents to the legislation that raises the legal drinking age argue that the only way to cure the problem of drunken driving is through education. How will you educate people so they will not drive while drunk or under the influence?

2. Role Play

a. A friend is drunk, and is supposed to drive you home. Tell your friend you do not want him/her to drive, and give plenty of legal, social and other possible reasons.

b. You are at a restaurant, and your parent has had a lot of wine with dinner while celebrating. Convince your parent not to drive.

c. While walking to your car, you see a drunk person trying to open the car door to drive somewhere. Convince this person not to drive.

3. Problem-Solving

Yesterday, you were convicted of driving while impaired. Design your transportation for the next year. Remember your license was revoked for at least a year. How will you get to school or work, go on dates, to dances, parties, to the prom, to team practice, or to a meeting, or to a friend's house without a license?

4. Discuss the newspaper article below. Is the sentence fair? to lax? or too harsh? What would you have done if you had been the judge? Or have a mock trial to argue this case.

> Drunken Driving Term: Pay Widow for 30 Years
> Raleigh, NC, March 31 (AP)--A doctor who admitted being drunk when he was involved in an automobile accident in which a man was killed must pay the widow $25,000 a year for 30 years and donate a pint of blood every two months for five years.
>
> Under a plea bargain agreement in a hearing in Superior Court Friday, Judge Coy E. Brewer also placed the physician, Dr. Robert D. Ornitz, on supervised probation for five years.
>
> Dr. Ornitz, who is 40 years old and a radiation oncologist at Rex Hospital, pleaded guilty in December to death by motor vehicle, driving under the influence and driving left of center in the accident December 17, 1982. Harvey D. Karsevar, a father of three, died of head injuries after the accident. The station wagon he was

driving was struck head-on by Dr. Ornitz's car in Raleigh. Mr. Karsevar's wife, Linda, was slightly injured. Dr. Ornitz suffered a fractured pelvis and broken jaw. His attorney, Wade W. Smith, said Friday that the sentence was "remarkable" for its fairness. (Winston-Salem Journal, March 31, 1984)

5. You are the judge. Decide grossly aggravating, aggravating, and mitigating factors, and determine a fair sentence for each defendant. Support your decision.

a. After a big party breaks up, Lawrence, age nineteen, and his friends pile into Lawrence's car. Lawrence decides he is the most sober of the bunch, and begins to drive the group home. Along the way, he is stopped at a roadblock; he is tested for impaired driving with a breath test, and has an alcohol concentration of .10. He has no prior convictions, no alcohol in the car, and was driving safely when he was stopped. Determine his sentence.

b. Grace has a bad asthma attack at school, takes only her prescribed medicine and drives home. The medicine makes her drowsy; she runs a stop sign. She is pulled over; the officer notices the drowsiness and charges Grace, sixteen, with driving while impaired. Her alcohol concentration is .12. Decide her punishment.

c. Robert, age sixteen, is drag racing to impress his friends. An officer sees this, and arrests Robert. The officer sees on the seat next to Robert an opened vodka bottle which Robert owns. Robert takes a chemical test and has an alcohol concentration of .000. He is charged with possession of alcohol by a minor. Determine the punishment.

d. Allan, age twenty-one, is stopped for a routine license check on Friday night. He does not have his license and upon investigation it is found that he let his brother Paul, seventeen, borrow his license to buy liquor for a party. With what crime is Allan charged, and what is his punishment?

6. Do You Have An Opinion? The following opinions have been expressed by lawyers and legal professionals in North Carolina regarding issues surrounding the Safe Roads Act of 1983. Conduct a class discussion on these opinions. Invite a police officer, judge, lawyers, member of MADD (Mothers Against Drunk Driving) chapter in your area or other appropriate resource people to share their opinions on these issues. Ask a police

officer to bring a breathalyzer machine and demonstrate how it works.

a. Jurors are apt to convict the defendant on the basis of public sentiment alone, and not the facts of the individual case.

b. It should be against the law to drive a car while "under the influence" of the stress and strain of life and its pressures that account for numerous accidents through distractions and lack of attention?

c. An arrest for DWI is a judgment call. What one person concludes from certain observations, facts, or events, may not be the same conclusion another person will make on the same observation and facts.

d. Individual tolerances for alcohol should be considered rather than a single breathalyzer presumption reading of .10.

e. Legislating stiffer penalties is a solution to the DWI problem.

f. Raising the drinking age to twenty-one years will reduce the number of DWI accidents.

g. All states should be required to apply the same breathalyzer standard of .10. (Idaho and Utah use .08; District of Columbia, .05 while some states use .15).

7. Computer Activity: Using the accompanying computer courseware, develop a mock trial based on the computer mock criminal DWI case. Teams of students can role play the attorneys in selecting a jury. Other students can assume the role of the jurors selected through the computer Voir Dire Simulation.

LESSON TWO

COMPARATIVE JUDICIAL SYSTEMS: A GLOBAL PERSPECTIVE

BACKGROUND INFORMATION:

The ideological, diplomatic, political, economic and military impact of the People's Republic of China on the rest of the world provides strong reason to study and to understand the Chinese legal and judicial systems. It is important to understand how the legal system of the world's most populous nation functions. It is one of the world's oldest continuous cultures. The third earliest legal system of the world in origin is the Chinese, beginning before 2500 B.C. (Egyptian before 4000 B. C., Mesopotamian around 4000 B. C.) It is the only legal system that has survived continuously to date, a period of more than 4000 years (Georgia Journal of International and Comparative Law, Vol. 5, No. 1, 1975, p. 77). Today there are 1.1 billion people living on 3.69 million square miles of land. Over 128 American companies have offices in Peking. R. J. Reynolds Industries, Inc. of Winston-Salem, N. C. announced earlier this year that it would build a factory and produce cigarettes in China as a joint project with the People's Republic of China (P.R.C.).

The Inquisitory vs. The Adversary System

Today China, like Russia, West Germany and France, has an inquisitory rather than an adversary system of justice. The inquisitory system focuses on searching for "material truth." The most involved person in that search is not the prosecutor or the defense attorney, but the judge. Lay juries are not part of the system. Attorneys may initiate proceedings, but they play minimal roles after that. A judge is relatively free to conduct the inquiry and make arrests as he or she wishes. There are few technical rules of evidence.

On the other hand, the adversary system, with it's strict adherence to rules and legal procedures, is the hallmark of the American judicial system. The term "adversary" implies two sides advocating different positions. The judge is the "referee"--the enforcer of the rules--not the investigator or prosecutor. If the trial is a bench trial, (one in which there is no jury), the judge decides what facts are true, determines guilt or innocence, and applies the appropriate law in the case. In a jury trial, those issues of fact and decisions of guilt or innocence are determined by that panel of citizens selected from the community.

Inquisitory proceedings resemble adversary system pre-trial conferences. They are conducted in an informal manner and are not recorded in a verbatim transcript. All issues in the case, both law and fact, are open for review on appeal. New evidence can be submitted on all points. In the adversary system, appeals to an appellate court are on issues of law only. They do not involve issues of fact which have been determined during the trial process (see Teaching About Our Jury Systems, Unit 1 for a description of the North Carolina and Federal Court systems).

Besides the obvious differences in procedures, the inquisitory system differs in several other ways from the American adversarial process. The judge conducting the investigation is more likely to act upon his or her biases than is a judge in an adversary proceeding (The Adversary System: A Description and Defense, American Enterprise Institute Studies in Legal Policy, Washington, D.C., 1984, p. 49). The inquisitorial approach is less sensitive to claims concerning individual rights. Individual rights are not as important as material truth. Generally, the inquisitorial process will not serve as a check on government power. Throughout Europe, inquisitorial judges are bureaucrats who identify with the government and whose advancement in the judicial hierarchy depends on accommodations rather than confrontations with other branches of government.

Historically, the inquisitory commitment to material truth was so strong that between 1300 and 1800 judicial officers in England used torture to pursue the facts in a criminal case. Modern inquisitorial procedures have clearly rejected such methods, but the emphasis on materials truth remains.

Evolution of the Jury

During that same period (1300 to 1800) the jury was transformed. It had been an instrument of royal inquiry in England. Gradually it became a neutral and passive fact finder representing the community and protecting individuals from government tyranny. The existence of the jury in the 13th century blocked the introduction of the inquisitory process in England. The development of the jury system in England is directly linked to the decline of medieval forms of procedure such as ordeal, battle and torture.

The first juries were selected from the locality in which the dispute arose and selected because of their knowledge of the situation. Jurors replaced the role of judge in that they were allowed to conduct their own investigation prior to trial. The rationale behind this process was that jurors with knowledge of the facts would be able to make a reasoned decision. The reliance upon each juror's personal knowledge marked early jury procedures as inquisitorial rather than adversarials. The jury did not act as a neutral fact-finder initially, but as an active and inquiring group of citizens searching for material truth. However, English juries by the late 1600`s had become an independent body capable of resisting government direction.

The growing neutrality and independence of the jury had the effect of loosening the government's political hold on the judiciary. Juries relieved the judges of responsibility for unpopular decisions. They insulated judges from political criticism and allowed them to concentrate on questions of law. Judges did not have to conduct investigations or prosecute cases.

At the same time in Europe the Roman-canon system was developing. It resembled the inquisitory process in that it focused on inquiry by the judges to uncover the truth. Judges investigated cases, gathered proof and rendered decisions. However, their authority was limited by strict rules of evidence. Judges could not find defendants guilty in criminal cases unless two eye witnesses were produced who had observed the crimes being committed. If these witnesses were not found, the only way the defendants could be found guilty was if they confessed. Circumstantial evidence was never sufficient in itself to warrant a conviction. With such emphasis on a confession, the Roman-canon process authorized the use of torture to secure a confession.

England neither adopted the inquisitory nor this Roman-canon method, but instead relied on the jury. The jury was not bound by strict rules of evidence. It could hear a broad range of evidence in order to make a decision on guilt or innocense. By the end of the 1700s the adversary system with its focus on the jury as the neutral fact-finder was firmly established in England and America. The special needs of the 18th and 19th century society promoted the adversary process. There were more participants in the legal process and they were from varied social and economic classes. A neutral mechanism was needed. The best way to demonstrate neutrality was by using a disinterested, passive fact-finder. Through the use of juries, the courts gained credibility as mechanisms for resolving disputes. Courts were also viewed as open forums to which new social groups could come to seek justice. Juries, viewed as objective factfinders, made this possible.

The People`s Republic of China - A Historical Approach

Taking a historical look at a system whose present day focus remains on the inquisitory process, the People's Republic of China (P.R.C.) has a long tradition of law and legal institutions.

Recent archeological findings in central China have turned up some 1,000 bamboo law documents with Chinese writing dating back 2,200 years. The bamboo slips record laws, acts and judicial cases of the Chin dynasty (221-207 B.C.). From ancient times to the present, the law and legal system in China have undergone changes, representing the influences of various philosophical systems. The traditional Chinese judicial system placed social justice and equity above the law. Influenced by the thinking of Confucius, government was based on moral, virtuous men and not laws.

Confucius was a Chinese sage (a wise counselor or philosopher) who purportedly lived sometime in the 6th or 5th centuries B.C. Chinese law under his influence was somewhat subjective. Confucius was against written law because it was inflexible, was based on force, and would encourage people to put faith in words rather than in what was generally understood to be virtuous and decent.

This Confucian concept of how to maintain order in society was challenged by the Legalists who successfully unified China under the Chin dynasty in 221 B. C. With little faith in man's basic desire to be good and virtuous, the Legalists believed that man acted out of self-interest. They believed that harsh laws would deter crime and these laws must be applied equally to all classes and all ranks regardless of one's position in society. The Legalists established a model of dynastic government which lasted until 1912.

The following quotations help to describe these two different legal philosophies.

> Lead the people by laws and regulate them by penalties, and the people will try to keep out of jail, but will have no sense of shame. Lead the people by virtue and restrain them by the rules of decorum, and the people will have a sense of shame, and moreover will become good. - Confucius

> When the sage rules the state, he does not count on people doing good for themselves, but employs such measures as will keep them from doing any evil. Han Fei Tzu -Legalist

The Chinese Legalist's Philosophy

Under the Legalists' philosophy, the law was embodied in the magistrate, who was considered a servant of the government rather than an independent observer. He had the major responsibility for all governmental activity in his community. When wearing his judge's hat, he was investigator, jury, lawyer, and judge with only a few aides, paid by him, to help him. He had no special knowledge of the rules to be applied in the cases brought before him for decision. During this long Imperial period, the Chinese neither developed an independent judiciary, nor a body of judges specially trained in the law. Executive and judicial powers were not separate, and the legislative role was nonexistent.

Under circumstances such as these the Chinese did not resort to magistrates for the settlement of their personal disputes. Relying on magistrates was not always looked upon with approval by the higher authorities. The Emperor Kang Hsi, issued the following decree early in the eighteenth century.

> The Emperor, considering the immense population of the empire, the minute division of landed property and the notoriously litigious character of the Chinese, is of opinion that lawsuits would tend to increase to a frightful extent, if people were not afraid of the courts, and if they felt confident of always finding in them ready and perfect justice. As man is apt to delude himself concerning his rights, contests would be interminable, and the half of the empire would not suffice to settle the lawsuits of the other half. I desire therefore, that those who have recourse to the courts, be treated without any pity, and in such a manner that they shall be disgusted with the law, and tremble to appear before the judges. In this manner the evil will be cut up by the roots; the good citizens who may have difficulties among themselves will settle them like brothers by referring them to arbitration. As for those who are troublesome, obstinate and quarrelsome, let them be ruined in the law courts,-that is the justice that is due them. (W. W. Willoughby, Constitutional Government in China, Washington, D. C., 1922, p. 50)

Prior to the revolution of 1911 China was an empire with a small ruling class and a large number of peasants and workers. The Confucian-influenced legal system emphasized status, the importance of the intellectual, and the subservience of women. The Legalists stressed the rule of law, which was applied equally to all people. With the Communist "liberation" in 1949 the emphasis was on the dictatorship of the people (protetariat). When China refers to people it does not mean all people, but the peasants, workers and the army.

The Chinese Communist Regime

After it seized power in 1949 the Chinese Communist regime in mainland China repealed all the laws of the nationalist government because these laws stressed the interests of the bourgeois class and the feudal society. Nationalist laws were supplanted, however, not by new codes, but by a mixture of statutes, degrees, rules, orders and party resolutions. Ideally, wise lay people would hear civil disputes and make just decisions based on the principals of socialist morality. Issues were resolved through mediation at the neighborhood level. Criminal cases came under the authority of the Ministry of Public Security (national police) and the Communist Party. The police had wide powers of arrest and prosecution.

Lawlessness was the order of the day during the Cultural Revolution, (1965-76), which was followed by a period when the Party and the police continued to keep firm control of the formal judicial system. The Cultural Revolution stressed the role of revolutionary committees at the local level, elected from the people which supervised the day-to-day activities of the commune or subdivisions. They enforced policies laid down by the local and national government, decided on rules of conduct and settled disputes.

Law was considered a counterrevolutionary class weapon. Many viewed law as a capitalist invention of the West. For ten years no public trials were held in China. The constitution and codified laws were discarded, law schools were closed, and many judges and lawyers were sent to rural agricultural communes to work. The Cultural Revolution was a period of intense anti-bureaucratic and anti-intellectual sentiments. Small groups were the primary vehicle for decentralization--a guiding principal of government policy.

Before 1979 Communist China did not have a comprehensive criminal code or any form of standard legal procedure. (The Criminal Code of the People's Republic of China, Fred B. Rothman & Co., Littleton Co., 1982, translated by Chin Kim.) With the adoption of a new constitution in 1978, the People's Republic of China took a major step toward modernizing its judicial and legal systems. Further changes have resulted from the adoption of a criminal code in 1980 and constitutional revisions in 1982. The new constitution of 1978 acknowledged wide-spread abuse of police power and the lack of protection for accused citizens. The 1982 Constitution marked the decline of the people's commune by taking away its political responsibilities (New York Times, Dec. 3, 1982, p. 14).

The judicial system that has evolved since 1978 does not rely on a jury system, but does require concensus decisions. Instead of one judge serving as mediator or referee, interpreter of rules, investigator and factfinder, there are three judges who decide issues of fact and law. These judges, two of whom are elected by the people, ask questions of the attorneys who represent both sides in either a civil or a criminal case. These lay judges are called assessors.

The concept of law in the service of government politics is the basis for the legal theory in China where the primary political concern is the dictatorship of the proletariat (the people). The new constitution protects the state and the socialist system from harm done by political wrongdoers and other "bad elements" in society. Presiding judges are selected by prescribed rules, laws and regulations. A person's political and moral behavior is considered. Family background is important. Persons from the landlord, capitalist or bourgeois classes are unable to act as judges. However, their sons and daughters can become judges if they are "politically competent." (Judicature, Vol. 63, 10, May 1980, p. 481).

Unlike the American adversary model in which the courts are theoretically impartial agencies for resolving conflicts, Chinese courts under the Communist Party have been seen and used as active participants in the implementation of Party and state policies. As in all other Chinese governmental activities, it is common to announce publicly the principal current policy goals which the courts should aim to realize and to link their work with implementing those policies. For example, the President of China's Supreme People's Court stated in April, 1980 that the four principal goals of the court for that year would be to: (1) severely punish active criminals who commit murder, arson, robbery and rape; (2) gradually put into practice changes in the criminal law and procedures; and (3) review verdicts reversed by lower courts. Judicial activities in 1981 focused on economic crimes.

The use of the courts reflects the strong need felt by the Chinese leadership to turn squarely away from the violence and irresponsibility of the Cultural Revolution, and to right the countless arbitrary injustices committed in the name of "correct policies." In the course of this activity the prestige of the courts may be raised. (China Law Reporter, Vol. 11, #4 Fall, 1983, p. 246). However, the technique of policy statements raises the obvious question about the independence of the courts. It is likely that there is heavy pressure to convict persons charged with violating currently-emphasized laws. Unlike the American adversary system, the defendant is not presumed innocent until proven guilty beyond a reasonable doubt. He is presumed guilty and must prove his innocence.

Under the new constitution all citizens must be treated equally under the law. The Constitution provides for public trials and for the right of an accused person to be defended by a lawyer or other person designated by him. However, lawyers are generally used to plead mitigating circumstances in the people's court and plead for lenient sentencing for their clients.

The Chinese concept of public trial is different from that in the United States. Public trials as such are not held in China unless the court is convinced on the basis of its pre-trial investigation that the facts alleged will be proven in open trial. If there is doubt of the defendant's guilt, the public trial will most probably not take place.

Whenever public hearings reveal important inconsistencies in evidence gathered before and during such hearings, the courts will adjourn to continue their investigation in private. The function of the trial is to demonstrate guilt, rather than to inquire into the alternatives of guilt or innocence. Fu Yuehua, a leading female dissident woman, was convicted of violating public order by creating a disturbance to protest official inaction on her complaint that she had been raped by her supervisor. At a public hearing, she introduced two items of evidence that had not been part of the record. At that point, reported a Xinhua news release on January 6, 1980, "the collegiate bench of judges held that the evidence that she had put forward must be further investigated and the hearing was adjourned." The court then assigned personnel to plunge deeply into the masses and conduct a thorough investigation. Meanwhile, Fu Yuehua was called back to court several times to check the evidence. (Ibid., p. 208). At a later public trial, Fu was convicted.

Today there appears to be a double standard of justice. Ever since the government launched an unprecedented crackdown on crime last summer, 6,000 Chinese have been executed while high level Party leaders escape prosecution, let alone imprisonment (Time, April 30, 1984, p. 31). Over the past twelve years, a former Party leader was charged with murder, and several charges of rape and corruption. Nothing ever happened until last year investigators discovered he had defrauded the state of more than $13 million. Then he was arrested. However, the average citizen is often spied upon by local committee members and can be arrested by the national police using "administrative measures" that involve no lawyers, courts or appeals.

The people (the masses) play a role in the criminal justice process. If a person held by the police can be "educated" within 24 hours, he or she will be released and returned to the masses. The masses will help reform the individual, even if the case involves the commission of a crime according to the law. Education focuses on changing the attitude of the person charged with a crime. However, if the police feel they can not educate the person, the case is referred to the Public Security Bureau (the national police). The person can be held for a period not to exceed thirty days, depending on the seriousness of the offense, while a further investigation is conducted. After thirty days the individual is either released or arrested. If arrested, the individual must read and sign a warrant which states the grounds for arrest. If an individual is detained at any stage of the process, he or she is required to study the writings of Marx, Lenin and Mao and is obliged to engage in self-criticism.

The masses are also involved in resolving civil disputes. The revolutionary concilitation committees consist of seven to eleven members each who hold regular jobs. The committees investigate and study the disputants' problems. The committees are under the jurisdiction of the lower people's court. If a litigant is not satisfied with committee recommendations, he or she is free to appeal the case to the people's court. Appeals may be made on issues surrounding trial procedures as well as those involving the sentence. This court is the first in the appellate chain of the Chinese court system.

The judge is still the focal point of trial procedures today, but he or she is accompanied on the bench by two "judges" or assessors. These assessors are considered representatives of the people who take part in the public trial with equal voting rights as those of the judge. Assessors represent a modification of the traditional inquisitory system. They represent the closest parallel to the jury system under the adversary approach that can be found in the Chinese judicial system.

The Chinese Court Structure

The court system structure and the appeal process in China are similar to an adversary system of justice. The court system in each of the provinces consists of three main levels. For example, in Hubei province there are the Higher People's Courts, Middle People's Courts and Basic (local) People's Courts, of which there are 85 spread over 11 districts. The higher courts are divided into several sections, including civil and criminal. The criminal section is further divided into two sections with one handling counterrevolution crimes such as espionage or sabotage and the other handling common crimes. The civil part of the higher court deals primarily with cases centering on marriage disputes, inheritance and property rights. If either a civil or a criminal case is appealed to the higher courts, three judges hear the case. The case can further be appealed to the Supreme People's Court established in 1975 in Beijing (Peking). The higher courts can also serve as courts of first instance in trial jurisdiction. In such situations, the case is heard by one judge and two assessors elected by the people.

Due to constitutional changes since the Cultural Revolution when courts and lawyers were either puppets of the Communist Party or nonexistent, the rights of individuals have begun to take on importance. An example of the changes which are taking place can be seen in the changed law enforcement procedures. In 1975 the Chinese Constitution allowed police to authorize arrests which permitted abuses such as bringing false charges against opponents of the Party. Now the law stipulates that "no citizen may be arrested except by a decision of a people's court, or with the sanction of a people's procuratorale, and the arrest must be made by a public security organization."

In a criminal case the Public Security Bureau must conduct an investigation and a preliminary trial to establish the guilt of the accused. If the Bureau thinks that it has made its case, it must submit its report to a procuratrial organ, which may or may not concur with the Bureau's findings and conclusions. There can be no arrest of the accused without the express consent of the Procuracy.

The Procuracy is both the prosecuting authority and an agency charged with upholding the lawfulness of the prosecution. It must not only obey the law itself, but must simultaneously check any unlawfulness of the Public Security Bureau or the courts. Apart from its duties as participant in the criminal process, the Procuracy has the additional responsibility of protecting the right of citizens to accuse State officials of violating the law. It is also supposed to heed the leadership of the Communist Party while not violating its own independence under the law. Its role is one of balancing interests, but under the 1982 Constitution individual rights can not supersede the interests of the state.

In the case of a serious crime, if the Procuracy authorizes an arrest, that body will conduct a further investigation and its own preliminary trial to establish if the accused is guilty. After guilt has been determined, charges will be brought in a people's court on behalf of the state. The defendant is allowed to present a defense in the people's court.

As soon as a people's court learns from the Procuracy about counterrevolutionary groups or gangs of embezzelers, the court has the right to authorize an arrest or to conduct its own investigation. Judges can arrest the accused themselves or authorize the Public Security Bureau or court personnel to make the arrest. At the district level the courts do not have arrest powers and must rely on the approval of the Procuracy. Article 42 of the new constitution stipulates that the local people's courts are accountable to local people's congresses. The court must report serious crimes such as murder, rape and counterrevolutionary activities to the people's congress.

Conclusion

This section on background information has given you an overview of the inquisitory system with a focus on the historical, cultural and legal developments of that system in China. A comparative study of the adversary system of the United States and the inquisitory system practiced today in the P.R.C. should explore what the constitutions and the criminal codes of the two countries say about their judicial systems, and also the intent of those systems. Often what appears on paper can not be substantiated in court if other interests supersede those interests outlined in the constitution. Students should look at the ways in which laws and judicial systems are changed. How have they been changed in China over the centuries? How do they differ from changes made in the United States Constitution?

Student Activities expand on such specific Chinese issues as constitutional rights of individuals, women's rights, the Juvenile justice system, family law, comparations with the Russian and French judicial systems, an examination of the famous Gang of Four trial of 1980, and a look at sentencing practices in China. Specific background information concerning the student activities is provided under the appropriate headings.

PURPOSE:

The purpose of this lesson is to understand the historical rationale, definition and function of community (citizen) involvement in the judicial system of the People's Republic of China and other countries. These systems will be compared to the jury system used in the United States and North Carolina.

OBJECTIVES:

1. To compare the United States and North Carolina judicial systems with the People's Republic of China.
2. To debate the pros and cons of the adversary system and the inquisitory systems of justice with emphasis on how they relate to the involvement of citizens.
3. To analyze and evaluate the rights of individuals as guaranteed in the constitutions of the United States and the People's Republic of China.
4. To compare and contrast historical, social, economic and political influences on the judicial and legal systems of the United States and the People's Republic of China.
5. To research and analyze the role of citizens in the civil and criminal justice systems of the People's Republic of China and other Asian and European countries.

VOCABULARY WORDS:

Inquisitory	A system of judicial procedures in which the judge serves as prosecutor and defense attorney by asking (inquiring) questions. The goal is seeking material truth.
Adversary	A system of judicial procedures in which the judge serves as "referee" with opposing sides presenting their cases to the decision maker who is either a judge or a jury.
Assessors	Members of the community elected by the people to serve along side the judge in inquisitorial trials. Usually there are two assessors serving with one judge and having equal decision making power.
Dictatorship of the Proletariat	The assumption of political power by the people which is considered essential to establish a classless Marxist society.

Cultural Revolution	The period between 1965 and 1976 in China under the leadership of Mao Tse-tung when lawlessness prevailed and the individual rights of citizens were ignored.
Confucius	A Chinese philosopher who lived in the 6th or 5th centuries B.C. Under his influence Chinese law was based on the belief that people were basically virtuous and decent and did not need written laws by which to live.
Espionage	The practice of spying on others or employing others to spy. Mao Tse-tung's wife, ringleader of the Gang of Four, was charged and convicted of espionage.
Revolutionary Committees	Committees composed of citizens whose task it is to mediate local disputes in an effort to keep the case from going to court. The committees are under the jurisdiction of the lower district court.
Public Security Bureau	The national police force in China, which conducts investigations and hearings to determine guilt or innocence prior to bringing cases to court.
Cadres	Term used to describe judicial workers and employees of the court in China. They are often Communist party veterans.
Li	The Chinese term used to describe a system of ritualistic acts which govern social interaction and codes of behavior during the time of Confucius.
Fa	The term used by Chinese to describe man made laws and formal system of rewards and punishments which followed the "li" period and its abstract system of morality.
Procuracy	The Chinese term for the prosecuting agency representing the government at a criminal trial.

STUDENT ACTIVITIES AND HANDOUTS:

A. Discuss the similarities and differences between the People's Republic of China and the United States judicial and legal systems. Focus on the application of constitutional guarantees and the role of citizens in those systems. Invite a history, international law or humanities resource person to visit your class and discuss the historical , political, cultural and psychological factors that created the differences in those systems. Discuss the two judicial systems with regard to the concept of justice.

B. Analyze what is meant by "inquisitory" and discuss the pros and cons of an inquisitory system of justice and its hypothetical application in the United States. Discuss the pros and cons of the adversary system of justice.

C. Conduct a mock trial first as an adversary process and then as an inquisitory process (or a modification using the French jury system). Analyze the differences in reactions, feelings and results. Decide which process seemed fairest and most just with respect to (1) the defendant, (2) the attorneys, (3) the community, and (4) others.

D. The following individualized classroom activities offer a variety of teaching strategies that reinforce and expand upon the background information and vocabulary words of this lesson. Students may select specific subject areas, such as individual rights, juvenile justice, role of lawyers for indepth comparisons between the judicial systems found in this country and in other countries around the world.

STUDENT ACTIVITY

TITLE: COMPARING THE USE OF JURIES IN WESTERN EUROPEAN AND COMMUNIST COUNTRIES.

PURPOSE OF ACTIVITY:

The purpose of reviewing the principles and practices used by different countries is to help students develop a better understanding of the values and principles of the United States jury system. Students will develop an understanding of why other countries apply different practices of community involvement in their judicial proceedings. Legal and judicial procedures reflect the ideology of a society. By looking at community involvement in that process, students will develop a better understanding of its application to the economic, political, social, and historical influences in those countries.

DIRECTIONS:

1. Review the Background Information section at the beginning of Lesson Two with your students. Be sure they understand how the Chinese judicial system functions with regard to "community involvement."

2. Distribute copies of Addendum One to students.

3. After they have read Addendum One ask students how they feel about the French System. Suggested discussion questions and activities are contained in Addendum Two.

4. Following classroom discussion of the issues, role play the French jury voting process. Use actual fact situations which students have clipped from newspaper accounts of judicial proceedings in your community.

5. Distribute Addendum Three. Discuss the Russian Judicial System using Addendum Two discussion questions as a guide.

ADDENDUM ONE: Comparing the Use of Juries in Western European and Communist Countries

The use of the jury in civil and criminal legal proceedings reflects the need to enlist members of the community to assist in the adjudication of an issue. Juries are chosen to represent the conscience of the community.

Continental or European juries differ from Anglo-American juries in several ways. In the United States citizens are called for jury duty for a day, a week or several weeks. They may or may not serve, depending upon the number of cases being tried and the peremptory and cause challenges made by the attorneys. In the system most frequently practiced in Europe, jurors serve for a longer period of time. For example, jurors or "assessors" may be chosen or elected for a two-year period and during that time serve only twelve days per year.

Another difference between the two systems is the role that jurors play in the proceedings. Under American as well as British law, jurors determine the facts from the information presented, while the judges apply the law. Jurors determine guilt or innocence in a criminal case and the judge imposes the sentence. In the French, West German, Soviet and Chinese proceedings, the jurors serve as lay judges or assessors. Judges and jurors together decide the facts and the application of the law. (Isidore Starr, "Looking at the Law: Here, There, and Everywhere" Intercom,No.100 , 1981, p.9)

These systems are called inquisitory rather than adversary because the judge and the assessors ask questions and investigate the cases. Attorneys play minor roles and often only present mitigating circumstances when sentencing is being considered. No objections are allowed. There is no cross-examination by the defense attorney or the procurator.

The French system in many respects follows the inquisitory model. However, the differences which the French system present provide us with a chance to apply some variations to the jury system as we understand it in the United States. Though France has three judges (which can include two "assessors" representing the community) handling cases it can also use a jury somewhat similar to that used in the United States. Juries are used infrequently in France, but when they are used there are usually twelve persons selected to serve. There is no charge to the jury at the end of the trial. The presiding judge actively directs the courtroom proceedings by interrogating the defendant and witnesses. He or she submits a list of questions to the jury which they are required to answer with simple "yes" or "no" responses.

Standard questions include:

1. Did the accused prove his alibi?
2. Was the accused present at the scene of the crime when it was committed?
3. Was the act of homicide one of self defense?
4. If you find the defendant guilty, were there any any extenuating circumstances?

Jurors vote individually and in secret. The verdict is reached by a majority decision. If the vote is close, such as seven to five, the presiding judge may change the verdict with the aid of the two assessors.

ADDENDUM TWO: Discussion Questions

1. If you were a defendant accused of a serious crime which you feel you did not commit, would you want to be tried under the French system with a jury as utilized in that country? Why? Why not?

2. In your opinion, what is the purpose of the French use of the jury?

3. Would you like to try the French trial procedures in this country?

4. If you were selected to serve on a jury, in what country would you like to serve? Why?

5. Do you feel that the community, represented by average citizens, has a role to play in the court system?

6. Do you feel that jurors should investigate cases before they come to trial? What are the advantages and disadvantages of this practice?

7. If you were a judge or assessor in France which systems would you prefer? Why?

8. Which jury system is the fairest for society? For the defendant?

9. Which system is more likely to find the truth?

Other Activities:

1. Ask a trial lawyer to discuss the advantages and disadvantages of the American jury system with your class?

2. Develop a simple mock trial based on fact situations which students have clipped from newspaper accounts of judicial proceedings. Present the trial by French and by American procedures and compare the jury vote in each? If identical, discuss why? If different, discuss the reasons that citizens would have voted differently given the same set of facts.

3. Review Lesson One relating to jury size and unanimous verdicts in the American system. Do you think these issues are factors in European or Communist judicial systems?

ADDENDUM THREE: A Glimpse at the Russian System

Rules, regulations, institutions, and processes ensure that the law is constantly with us. Each society translates its value system--history, economic organization, religious beliefs, and philosophical world view--into legal codes and procedures. In other words, the law reflects the ideology of society. While capitalism and the democratic ethos are written into the law of the United States, the Marxist-Leninist principle of government control of the means of production is basic to Russian Society. China's trials--a type of group session in which peers attempt to educate and reform the accused--reflect Marxist-Lennist-Maoist ideology, where zealous commitment to the "revolutionary" masses is seen as a cure for deviant or counterrevolutionary behavior. (#100 Intercom, "Looking at the Law: Here, There, and Everywhere," by Isidore Starr, New York, 1981).

The 1977 Constitution of the Soviet Union (article 36) regarding basic rights, liberties and duties of Soviet citizens, states that the "exercise of rights and liberties by citizens must not injure the interests of society and the states or the rights of other citizens. This article is almost the same as article 51 of the Chinese Constitution. The law is primarily employed as a tool of the state.

The court system in the Soviet Union is similar to the one in China today. Assessors are elected from the community. They serve approximately two weeks per year. They hear and decide cases, along with a judge, and deal with issues of law as well as fact. The Soviet Union, unlike other countries, does not have a power of judicial review by an appellate court. The highest government body, the Presidium of the Supreme Soviet, is specifically charged under the constitution with the "interpretation of laws."

STUDENT ACTIVITY

TITLE: THE GANG OF FOUR TRIAL: A LOOK AT THE CHINESE JUDICIAL SYSTEM IN ACTION.

PURPOSE OF ACTIVITY:

The purpose of this student activity is to examine the roles and responsibilities of persons involved with an actual trial; to compare and contrast Chinese court procedures with those practiced in the United States, to research and discuss the political implications of the trial, as compared with politically motivated trials in other countries and in this country.

DIRECTIONS:

1. Distribute copies of Addendum One and ask students to read the background of the trial.
2. Review trial procedures as described in the Background Information section of this lesson.
3. Conduct a class discussion based on questions contained in Addendum Two.
4. Using the bibliography in the back of this teaching guide, ask students to research selected aspects of the trial and compare these with those practiced in the United States.
5. Conduct a mock trial based on current Chinese judicial procedures. Develop your own fact sheet, or use the information provided about the Gang of Four trial. Assign students specific roles as outlined in Addendum Three. Invite lawyers and local politicians to participate in your study, research projects and mock trial. Invite university professors familiar with Chinese historical and current events to assist in your research.

ADDENDUM ONE: The Gang of Four Trial: A Look At The Chinese Judicial System in Action.

For two decades ending in 1976, Mao Tse-tung lead China through a series of political, social, and cultural upheavals in which no one,--comrade, dissident, peasant, teacher, engineer or poet--could feel safe. As Mao aged and his power began to erode, his third wife, Jiang Qing, and her three chief allies formed one of the most ruthless conspiratorial groups in history, the Gang of Four. Accused of implementing Mao's infamous Cultural Revolution for their own ends, the Gang of Four was eventually arrested and put on public trial.

Though there were ten defendants from two groups, this description will focus on the Gang of Four (see Addendum Three for their background descriptions). Collectively, they were alleged to be responsible for framing and persecuting party and state leaders, causing the death of 34,800 innocent people and the unwarrented persecution of 729,511, plotting to overthrow the government, plotting to assassinate Chairman Mao, and plotting an armed rebellion in Shanghai.

At every stage of the trial from the investigation and pre-trial by the Ministry of Public Security to the final sentencing of the accused, the Chinese made a concerted effort to follow precisely the legal procedures and principles emboided in their recently enacted statutes. Almost every aspect of the trial was carefully publicized and legal actions were justified by citation to Chinese codes or general legal principles.

The press accounts suggest that the Gang of Four trial had two main objectives. Its primary purpose was educational. Through extensive media coverage, the trial gave the people a concrete demonstration of the new Chinese socialist legal system in practice and its applicability to even the highest officials. This lesson was reinforced at the local level with a series of comparable open trials of provincial and county leaders. The trial had as its related secondary goal the focusing of worldwide attention on China's legalization drive.

Evidence of national stability and legality was critical for achievement of one of the P.R.C. leadership's main objectives--the attraction of substantial foreign investment to China. The Chinese press at least gave lip service to concepts such as popular democratic rights, superiority of the rule of law, and procuratorial, judicial and legislative independence (*The American Journal of Comparative Law*, Vol. 30, 1982, p. 408).

The breakdown of legality during the Cultural Revolution cause great distress among the people. The Gang of Four was attacked strongly because of their misuse of official power to further their political ambitions. Their trial was highly political in nature. The alleged crimes were rooted in the now discredited "ultra-left" Maoist policies of the Cultural Revolution. The trial was both a reflection of a long political power struggle and a means used by the currently dominate leader (at this writing), Deng Xiaoping, age 80, to secure a conclusive victory over his radical opponents. After the overthrow of the Gang, Deng guided China on a path of economic and social reform.

As a showpiece of the new Chinese legal system, the trial has been termed by some as a disaster. It was a showpiece of what totalitarian regimes regard as justice for their political enemies. (David Bonavia, Verdict in Peking: The Trial of the Gang of Four, G.P. Putnam Sons, New York, 1984, p. 202). Dispite procedural shortcomings some Western scholars say the case represented an important step in recent Chinese history. Everything was done according to the facts and the laws. In the past there was no law. Much of the trial was carried on Chinese television, but only those parts that the government chose were aired. "Invited" spectators observed the proceedings. There were approxi-mately 800 different spectators per day.

All the defendants were found guilty. Mao's widow was sentenced to death with a two year reprieve and permanent deprivation of political rights. Political rights in China theoretically include the right to vote and to receive a fair trial. On January 25, 1983, she received a life sentence. She was to be helped to reform through labor in 1981 and 1982. Her conviction had been a foregone conclusion, but the sentence was politically sensitive. The death sentence is carried out in China with a pistol bullet in the back of the neck. This is carried out sometimes at a public rally.

Jiang was 69 when her two year reprive was completed. She was to have shown contrition which is demanded by law in order to reduce her sentence. Prisoners in China must do something useful when in prison. Jiang made dolls, but they were useless because she embroidered her name on them, so they could not be sold.

Chief Judge Jiang Hua presided over the hearing and at its conclusion granted Jiang a reprieve. He also presided over the original trial. She was granted a reprieve because of the new emphasis on the rule of the law. If she had been executed it would have affected China's new internal stability and newly won moderate image abroad.

There was no evidence presented at the trial that any member of the Gang of Four actually killed anyone with his or her own hands. Their collective crime was that they issued instructions that resulted in many deaths and persecution of others.

his or her own hands. Their collective crime was that they issued instructions that resulted in many deaths and persecution of others.

Interesting procedural aspects of the trial included:

1. Not a single defense witness was called to testify.

2. No prosecution witnesses were cross-examined by the defense counsel.

3. The purpose of questioning by the judge, the two assessors and the prosecution was to extract an admission of guilt from the defendants. Jiang Qing never admitted guilt.

4. The defense attorney conducted no investigation on his own. His case was based on evidence compiled by the prosecution. By law and by tradition, the role of the defense lawyer in criminal cases is limited to pleading mitigating circumstances for sentencing purposes on behalf of his client whose guilt is largely predetermined. Lawyers are considered servants of the state.

ADDENDUM TWO: Discussion Questions

1. Do you feel that the trial was fair?

2. Based on the trial procedures, do you think justice was served?

3. How would you define justice in China?

4. What do you think was the purpose of the Gang of Four trial?

5. Was it a public trial by United States standards?

6. How did politics play a role in the trial?

7. Do you know of any trials in this country that had political overtones?

8. How does the Gang of Four trial compare with the German war crimes trials after World War II.

9. Do you think that Jiang Qing received a fair sentence?

10. Why do you think she was given a life sentence after her two-year death sentence reprieve? What example was China trying to give to the world?

11. Do you think the results of the trial would have been the same under an adversary system of justice?

12. How did the Gang of Four trial procedures differ from those in an adversary system?

13. What aspects of the inquisitory system of justice do you favor?

14. Do you think the Gang of Four trial was a typical trial in China?

15. Do you think there should be different procedures for common crimes and political crimes?

ADDENDUM THREE: Preparing and Presenting a Mock Trial

The purpose of developing a mock trial based on the Chinese inquisitory system is to let students experience a criminal trial conducted by a totally different system of judicial procedures. It's impossible to script the trial in this introductory lesson, but students are encouraged to call witnesses who reinforce the government's position. There were no witnesses for the defense. Keeping in mind the purpose of the trial process, if students wish to expand on the framework of the Gang of Four trial, they are encouraged to do so.

Some names and facts are provided, including the charges brought before the court. Pronunciation of the Chinese names may be difficult. A foreign language teacher in your school may be able to assist students in this area.

Roles:

Presiding Judge: Jiang Hua

Two Assessors (representing the public)

Defendants: Yao Wenyuan-The Shanghai journalist who censored and altered articles and editorials, deciding who should be photographed with Mao, slashing television coverage of the funeral of the popular Zhou Enlai. This man masterminded the ideology of a movement in which millions of people suffered or died.

Zhang Chunqiao-A brilliant strategist who choreographed turbulent mass movements and street fighting that marked the passage of the Cultural Revolution through Shanghai and all of China. An enigmatic figure, he remained silent throughout his trial.

Wang Hongwen-The symbol of youth in the movement, who was recruited to command the rowdier elements of the Red Guard (mostly young students who became spies and enforcers for Mao's and the Gang's ideologies). His vanity was legendary-after Mao's death the press attacked him for being a coward, a bully, and a work-shirker.

Jiang Qing-Mao's third wife, an ex-actress from Shanghai, whose ambitions and vendettas formed the basis for some of the most horrendous outrages perpetrated during the Cultural Revolution. (Jacketcore, Verdict in Peking, by David Bonavia, G.P. Putnam's Sons, N.Y., 1984)

Prosecutor

Defense Attorney: Ma Rongjue

Prosecution Witnesses

Criminal Charges:

In accordance with the provisions of Article 9 of the Criminal Law of the People's republic of China, the procuratorate charged them with the following crimes:

1. attempting to overthrow the government and split the state;
2. attempting to engineer an armed rebellion;
3. having people injured or murdered for counter-revolutionary ends;
4. framing and persecuting people for counter-revoluntionary ends;
5. organizing and leading counter-revolutionary cliques;
6. conducting demogogical propaganda for counter-revolutionary ends;
7. extorting confessions by torture; and
8. illegally detaining people.

Variations:

Students may wish to select a familiar North Carolina case and develop a mock trial around that case, but present the case using the inquisitory model. Ask a lawyer or judge to help you find an appropriate case in the North Carolina Advance Sheets which report appellate court decisions. At the beginning of each the facts as determined at the trial level are summarized. Use these facts to develop a mock trial.

Additional Resources:

If students wish to research other criminal-political trials they could consider the following:

1. The Julius and Ethel Rosenberg espionage trial. Both defendants were found guilty and executed.(1951).
2. The Chicago Eight Trial. This trial involved charges of conspiracy to travel across state lines for the purpose of causing a riot (1969). The jury found them not guilty.
3. The Nuremberg Trials in Germany. The United States, England, France and the Soviet Union brought to trial persons and organizations responsible for starting World War II and for persecuting the Jews and other minority people. (1945). Those tried included the highest ranking living German military officers. Twelve of the twenty-one defendants received death sentences.
4. The Anatoly Shcharansky Trial in Russia. The Jewish defendant was a leader in the Soviet dissident movement, and was charged with treason and espionage. He was found guilty and sentenced to thirteen years in prison (1978).

Note: Excellent descriptions of these and other famous criminal and political trials around the world can be found in: Famous Political Trials and Famous Criminal Trials by Andrew David, Lerner Publications Company, Minneapolis, MN, 1980 and 1979 respectively.

STUDENT ACTIVITY

TITLE: LOOKING AT THE CHINESE JUVENILE JUSTICE SYSTEM

PURPOSE OF ACTIVITY:

The purpose of this activity is to help students evaluate and compare the treatment of juveniles in this country with that in the People's Republic of China. Students will examine political and social factors which affect the standards applied to youthful offenders and analyze the similarities and differences in the two juvenile justice system.

DIRECTIONS:

1. Distribute copies of Addendum One to students and ask each one to:

    a. make a list of similarities with the American system,

    b. make a list of differences with the American system, and

    c. ask students to form groups of 4 to 6 members and review their lists.

    Each group should develop a short statement which reflects the group's reasons for the systems being different and being similar. What social, political, cultural factors were involved?

2. Ask a Juvenile Court Counselor to visit your class. Ask your students to make a presentation on the Chinese juvenile justice system, based on the results of #1 above. Have him/her comment on their presentation and relate it to his/her experiences with the North Carolina juvenile justice system. Ask students to prepare questions in advance for their guest.

ADDENDUM ONE: Looking at the Chinese Juvenile Justice System

Law-related education is a required junior high school course in China. The purpose of the course on "legal knowledge" is to teach the students how to understand and observe the law, and how to distinquish what is legal from what is illegal so that their awareness of socialist democracy and the socialist legal system can be developed." (China Law Reporter, Fall, 1983, p. 32).

Children and youth are looked upon as the successors to the cause of China's revolution and reconstruction. The state, society and family give them "all around loving care and see to their healthy growth." (The Rights of Children in China" Columbia Human Rights Law Review, Vol. 13, 1981-82, p. 72). While the overall situation of youth in China is healthy, there has been a significant increase in juvenile delinquence. One of the serious social problems facing the present leadership is the fact that the overwhelming majority of those disrupting public safety and order are young people--children of workers, peasants and intellectuals who have grown up in the new society. China has had an increase in juvenile delinquency of about 10 fold since the early 1960's--before the Cultural Revolution. Of those apprehended today, 80 percent are under the age of twenty-five.

In China problems arising from drinking appear to be rare. There is no report of drug addiction among Chinese youth and teenagers. Most cases involve fist-fighting and theft. The Chinese give the following reasons for the delinquency problem.

1. Rebellion was actively encouraged during the Cultural Revolution when beatings and lootings were commonly accepted. Consequently, youth did not know right from wrong.

2. Inability to find jobs.

3. Failure of the families to give their children a strict upbringing.

In China, any person who has reached the age of sixteen is criminally responsibile for his offense. Any person between fourteen and sixteen years of age is held criminally liable only if he commits homicide, serious injury, robbery, arson, habitual theft, or other offenses gravely jeopardizing public order. Any offender between fourteen and eighteen years of age is given a lighter. Exempt from capital punishment are persons who have not reached the age of eighteen at the time of the commission of the offense. The death penalty with a two-year reprieve can be applied to any person between sixteen and eighteen years of age who has committed a particularly serious offense.

China does not have separate juvenile courts. During a juvenile hearing, the defendant is accompanied by his or her advocate and no other person is permitted to attend the proceedings. As a general rule information regarding the proceedings is not open to the public. A juvenile's right to representation is guaranteed by law. The juvenile may ask a lawyer, a close relative, guardian or person appointed by a social institution to represent him. If no counsel has been appointed, the court should provide one. Youth under the age of eighteen do not receive sentences, as such, but if found delinquent, are sent to a re-education house.

Education is used as the primary means of punishment. Educational aid teams are organized by street committees, residential groups, schools, factories, parents, businesses and the police to re-educate the problem youth and to make them improve their ways. For the cases too difficult for the neighborhood organizations to handle, work-study schools have been established in urban centers to train, educate and correct teenagers. As soon as they have "improved," they are sent back to their communities. For serious offenses, juveniles are sent to reform schools for one to three years. Of the 1,000 delinquents in Peking Municipal Reformatory, 5% are girls. The recidivism rate is 8-10%. They spend half a day in school and half a day working.

STUDENT ACTIVITY

TITLE: PRACTICING LAW IN CHINA TODAY

The legal profession in China was non-existent during the Cultural Revolution. Provisions regulating lawyers were adopted in August, 1980, six months after the new criminal code went into effect. They define lawyers as "the state's legal workers whose general function is to render legal assistance to state organizations and committees and to individual citizens in order to "protect their legitimate rights and interests." Lawyers may not set up private practices.

Lawyers are paid by the state. Current fees charged individual citizens by the Peking (Beijing) Legal Advisory Office are as follows: (1) up to one yun ($.58) for verbal advice on specific matters; (2) four yun for drafting a legal document; and (3) no more than 30 yun for legal defense in a criminal case.

The involvement of the defense attorney generally begins at or just prior to the trial and not during the investigative and case preparation stages. The defense of the accused is generally directed toward influencing the sentence and not the verdict of guilt or innocence.

Ma Rongjue, the defense lawyer representing the Gang of Four, based his case on evidence compiled by the prosecutor and conducted no investigation on his own. He said it was impossible to find anyone to testify (New York Times, Jan. 6, 1982, Sec. B, p. 1). At no time did he meet Jiang Qing before the trial, even though she was detained for four years prior to the actual trial.

Ma Rongjue had spent 10 months in solitary confinement and 10 years at hard labor during the Cultural Revolution. Now he is one of China's most prominent lawyers.

Discussion Questions:

1. If you were the defense attorney in the Gang of Four trial, could you be an objective representative for your clients?
2. If you lived in China today, would you like to be a lawyer? Why? Why not?
3. With respect to the public, do you think there are advantages to the Chinese way of involving lawyers in the judicial process?
4. Why do you think the government chose to involve lawyers in the way they have in the legal process of this country?

5. How does the role of the lawyer reinforce the inquisitory process?

Use of Resource People:

1. Invite a trial attorney to your class and discuss the differences in the role of an attorney in North Carolina and one in the People's Republic of China.

2. Conduct a debate on the pros and cons of both systems.

STUDENT ACTIVITY

TITLE: SENTENCING--A COMPARATIVE VIEW

PURPOSE OF ACTIVITY:

This activity offers students the opportunity to explore the purposes of sentencing under the Chinese system, and to analyze the rationale behind those purposes. Students will gain knowledge into the role the public plays in the sentencing process and evaluate it in light of the sentencing practices in the United States. The application of the death penalty in both countries will be examined, as well as its application in North Carolina.

DIRECTIONS:

1. Ask students to read Addendum One and be prepared to discuss their views of punishment, or read it together in class, discussing issues raised in the content.

2. Use Addendum Two to guide your class discussion.

3. Ask students to research accounts of the Margaret Velma Barfield case, using newspaper and magazine accounts. Using the information students have gathered, role play an appellate court asked to grant her a stay of execution, or the role of the Governor deciding the issue of clemency.

4. Ask a judge to visit your class and discuss sentencing practices in North Carolina. Discuss the application of the death penalty in China as compared with the United States and North Carolina.

ADDENDUM ONE: Sentencing--A Comparative View

"There are a lot of criminals in New York, but you don't punish them very hard," said Ma Rongjue, defense attorney in the Gang of Four trial. "In New York someone kills a policeman and he is sent to jail, where the food is good and he can drink coffee. In China, we would put the man to death." (New York Times. Jan. 6, 1982, Sec. B, p. 1).

In an April, 1979 Chinese criminal report, several criminal cases were discussed. Two murderers were sentenced to death; an automobile thief was sentenced to death with a two year reprieve (the same sentence the ringleaders of the Gang of Four received). In another report, an accused robber and murderer was tried, convicted and sentenced to death. He appealed his sentence, but his appeal was denied and his sentence was announced at a public meeting in Shanghai stadium attended by more than 2,000 people who "clapped and cheered and voiced unanimous support for the decision of the people's court." After the verdict was read, the defendant was led away and shot. In another case, an accused rapist was tried publicly and then shot. The trial was televised (China Law Reporter, Fall, 1983, p. 208).

China has increased its public reporting of trials. One purpose is to let the people know that the people's justice has been revived after the Cultural Revolution. Another reason is to show that criminals must be punished severely.

However, following the re-education philosophy, in another case a Shanghai worker was arrested for shielding and hiding a murderer. Because he "came to understand his criminal act" and "expressed his determination to criticize and overcome the reactionary code of brotherhood and remold himself," he went unpunished.

Less serious offenders are punished by "public surveilance." The purpose of putting petty offenders under mass surveilance seems to be to reform "socially desirable persons." The offender is subject to supervision. These sentences range from 3 months to 2 years.

If an offender receives a suspended sentence this means that the offender is subject to the criticism of the people. The public takes part in the "re-education" of the offenders. Offenders are expected to show true repentence and perform meritorious service.

The Legalists in China (206 B.C.) felt that government by punishment would instill fear in the people. Being fearful, they will not commit villanies; there being no villanies, people would be happy. On the other hand, the Legalists believed that if the people were taught by righteousness, then they would be lax, and if they were lax, there would be disorder. If there were disorder, the people would suffer from what they disliked. Their beliefs were dominate in Chinese society until the 1911 revolution.

In the United States the pace of executions has accelerated this year. During the first six months of 1984, nine people were executed, including one in North Carolina. This figure represents nearly half of the 20 inmates executed since 1977, when Gary Gilmore's death before a Utah firing squad ended a 10-year unofficial moratorium on executions. According to the U. S. Bureau of Justice Statistics, there are 1,202 inmates on death row in this country. China does not have a death row. Execution is immediate if a defendant does not receive a reprieve. He or she is shot in the back of the head.

In North Carolina in 1978, Margaret Velma Barfield was convicted of killing her fiance, a Robeson County tobacco farmer. Later she confessed to killing her mother and an elderly couple. She received the death penalty. She was scheduled to be executed in August, 1984, but received a stay of execution by the U. S. Supreme Court. That Court studied the jury selection process in the case, and it found no error. A new execution date will be set between 60 and 90 days of the ruling. If she is executed, she will be the first woman in 40 years to be executed in North Carolina and the first one in 22 years in the United States. The governor decided not to commute her sentence. There were no executions in North Carolina in the twenty-three year period between 1961 and 1984.

Both China and the United States apply the death penalty. However, the reasons and applications are often different. In both countries, politics and the views of the public seem to play an important role in its application.

ADDENDUM TWO: Discussion Questions

1. Do you feel that severe sentences deter criminal activity ?

2. How do you feel about the method of applying the death penalty in China today?

3. Do you feel that "public surveillance" would be effective in rehabilitating offenders in this country? Why? Why not?

4. Do you feel that political and societal attitudes influence the application of the death penalty?

5. Can you think of appropriate alternatives to the death penalty in this country? Would those alternatives be appropriate in China?

6. Do you feel that the cost of maintaining a defendant in prison should be a factor in the determining if the Chinese application or the United States application is fair and just?

7. Do you feel the public, the victim and the victim's family should be considered in determining an appropriate sentence?

8. What do you feel is the purpose of sentencing a defendant? For a minor criminal infraction? For killing someone unintentionally? For killing someone intentionally? What factors should be considered in sentencing someone?

STUDENT ACTIVITY

TITLE: WOMEN'S RIGHTS IN CHINA TODAY

PURPOSE OF ACTIVITY:

The purpose of this activity is to have students study and examine the rights of women in Chinese society today. Students will look at the written word and the application of these words in real life. They will gain an understanding of the role of women in the work place and in the family and marriage in the world's most populous country.

DIRECTIONS:

1. Distribute Addendum One and ask students to read it carefully.
2. Conduct a class discussion using the questions in Addendum Two. Ask students if there are other aspects they wish to discuss which focus on women's issues.

ADDENDUM ONE: Fact Sheet On Women's Rights In China

Article 48 of the 1982 Constitution states: "Women in the People's Republic of China enjoy equal rights with men in all spheres of life: political, economic, cultural and social, including family life.

The state protects the rights and interest of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres (party committee members) from among women."

One visible sign of apparent equal treatment can be observed on busy city streets and rural areas alike. Men and women dress alike. Basically, they wear loose fitting shorts or trousers with baggy tops. The clothes are the same colors--blue, green and gray. Cosmetics, curled hair and dresses seem to be non-existent.

Another sign of equality is that women are eligible to serve in the military. However, it is not clear whether or not they can engage in combat.

Article 9 indicates that "Husband and wife enjoy equal status in the home." Historically, this has not been true. The 2000 year old feudal marriage system was practiced until 1950, with major changes being implemented in 1978. Under the feudal system, parents arranged marriages. The men were in charge, and polygamy was permitted. If a woman's fiance died before the marriage ceremony, she was forced to remain single all her life.

Although the new law reaffirms the policy of "free choice of partners" the following quote demonstrates that the government recognizes the reality in China.

> [C]hoice may take two different forms. The first, which prevails in urban areas, is based on love and the mutual attraction between two people. The major problem is how to create more opportunities for young people to meet one another...This sort of free choice is also common in the more developed rural areas, and commune and production-run enterprises where young people from different villages work together...A second form of free choice in marriage, somewhat modified, allows the couple to decide on marriage with the help of the parents and a go-between. This form is more prevalent in China's rural areas..It is still not based initially on genuine love but rather on material considerations. Introduced by a go-between, the parents of both parties first consider how many members in each family share the family income and property, how many people in each family can work, and its annual income before they ask their children's opinion. Then a meeting is arranged.

Addressing the problem of finding the right mate - particularly in urban areas - the Marriage Introduction

Services are taking over where the matchmaker left off. Staff members match written requests and put people who seem to have compatible interests together. One third of their business comes from people in their 30's - many of whom work in neighborhood collective enterprises and have a hard time finding spouses. (China Update, Vol. IV, No. 3, April, 1981, pg. 5.)

Late marriages and late child-birth are encouraged in China. If you lived in China, you would be encouraged to have only one child. To curb population growth, the government has forced women to use birth-control devices, agree to be sterilized or undergo abortions. The government has also ruled that those with more than one child must lose ten percent of their income for at least five years. Peasants who believe the birth of a female child is a sign of divine disfavor have revived the practice of drowning baby girls at birth. The government has indirectly encouraged this practice by its preference for single child families. In the Xiaogon county of Hubei province last year, there were almost four times as many boys as girls under the age of three.

Article 24 states: Divorce is granted when husband and wife both desire it. Both parties should apply for divorce to the marriage registration office. The marriage registration office, after clearly establishing that divorce is desired by both parties, and that appropriate measures have been taken for the care of any children and property, should issue the divorce certificate without delay.

Article 25 states: "When one party insists on divorce, the organizations concerned may try to effect a reconciliation, or the party may appeal directly to the people's court for divorce...

"In dealing with a divorce case, the people's court should try to bring about a reconciliation between the parties. In cases of complete alienation of mutual affection, and when mediation has failed, divorce should be granted."

The divorce rate is very low in China. Divorce is considered an act of moral degeneration and is condemned by public opinion.

Article 10 states, "Husband and wife each has the right to use his or her family name." Also "both husband and wife have the freedom to engage in production, to work, to study and to participate in social activities they enjoy equal rights in the management of the property in their joint possession. Property acquired during their marriage is of joint possession."

Article 15 states: "Parents have the duty to rear and educate their children; children have the duty to support and assist their parents." When children fail to perform the duty of supporting their parents, parents who have lost the ability to work or have difficulties in providing for themselves have the right to demand that their children pay for their support.

Even though women have equal rights with men under Article 48, in reality this is not always the case. The China Daily reported May 7, 1983, that men and women are still treated unequally. It reported that recently when a university was selecting teachers from among its graduates, and not a single female student was chosen. When recruiting workers, a factory required an extra ten points in job examinations for female candidates.

On the other hand, the new Labor Safety Law states that women in manual labor can retire at age fifty with eighty percent of their pay, and in professional and office work, women can retire at age fifty-five with eighty percent of their pay. In both employment areas, men must be sixty years old before they can retire with the same pay as women.

China has made many changes recently expanding the rights of women, especially in employment and marriage. However, the ideal which appears in the constitution is not always reflected in the reality of everyday life.

ADDENDUM TWO: Discussion Questions

1. Would you like to be a woman living in China today? Please explain your answer.

2. How secure are women's rights under the Chinese Constitution when Article 51 states: "The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective or upon the lawful freedoms and rights of other citizens." Who should decide what infringes on the "interest of the state or society?" Are Articles 48 and 51 in conflict?

3. Why do you think late marriages and late childbirth are encouraged? (the official answer is that it helps women achieve identity as workers and participation in building society). To what other problem in Chinese society might this be directed? (overpopulation).

4. If you lived in China, would you agree with the government's efforts to limit each family to one child?

5. Does it sound hard to get a divorce in China? Why do you think the divorce rate is very low?

6. How do you feel about Article 15 which requires children to support their parents in old age?

7. Would you like to be able to select either the family name of your father or your mother? Do you feel this would cause any problems?

8. How do you feel about women being able to retire earlier than men?

9. Do you feel women have equal rights in this country? Do you feel women have equal opportunities?

STUDENT ACTIVITY

TITLE: CHINA'S CONSTITUTIONAL GUARANTEES: A GLIMPSE AT THEIR PRIORITIES

PURPOSE OF ACTIVITY:

The purpose of this activity is to introduce students to some of the individual freedoms guaranteed under China's most recent constitution (1982). In continuing their study of comparative judicial and legal systems, students will examine the right to free speech as viewed in Chinese society, and the role of the constitution in a Communist country.

DIRECTIONS:

1. Ask students to read Addendum One and to review similar guarantees under the U. S. Constitution.

2. Reinforce student knowledge of the Chinese Constitution by using the discussion questions in Addendum Two.

3. Ask a member of the legal department of R. J. Reynolds Industries Inc., P. O. Box 2959, Winston-Salem, N. C. to describe the company's experiences in signing a contract with China to jointly manufacture and sell cigarettes. How would legal issues arising out of the contract be resolved? Develop other questions for inclusion in your inquiry.

ADDENDUM ONE: China's Constitutional Guarantees: A Glimpse At Their Priorities

Article 35 of the 1982 Constitution states: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."

In addition, Chinese citizens are protected from unlawful search or intrusion into their homes. They are protected from insult, libel, false charge or frameup, and may not be arrested without approval from the procuratorate or the people's court. Under the 1978 constitution, they were given freedom to engaged in scientific research, literary and artistic creation and other cultural activities.

However, Article 51 states that "freedoms and rights may not infringe upon the interests of the state."

Supremacy of law has been largely discredited in favor of guidance by the "four fundamental principles" of party leadership, socialism, dictatorship of the proletariat, and Marxist-Leninist-Mao Tse-tung thought. Rule of law is not regarded as sufficient in and of itself. Moral standards, administrative disciplinary actions and ideological education are given equally critical roles in governing the People's Republic of China (The American Journal of Comparative Law, Vol. 30, 1982, p. 410). Legislation and codes do exist in China today, but they perform only two main functions--facilitating foreign economic relations and providing evidence of national legality for foreign and domestic audiences.

The constitutional guarantee of freedom of speech is subordinated to Communist Party objectives. It has been defined as a political rather than an innate right that could be constrained whenever "necessary" by socialist morality and party discipline. Party leaders have argued that freedom of speech is one of many "civil rights." However, there are coexistent "civil duties," including support of the party leadership. Since civil rights and duties are mutually dependent, the exercise of freedom of speech is necessarily related to the strengthening of party leadership. The Peoples Daily in February, 1982 warned citizens that they do not have an absolute right to freedom of speech and listed 55 regulations defining the limits. "Opinions which are anti-party and anti-socialist and which sabotage the unity of the motherland and the Nationalities must be prohibited." (China Law Reporter, Fall 1983, p. 250). The article went on to state tht "Democracy" cannot be used as a pretext by individuals to violate the basic principles of organization and discipline in China."

In other related constitutional rights, citizens have the "freedom and privacy" of correspondence, but mail may be intercepted and read "to meet the needs of state security or investigation into criminal offenses." Also, no book or magazine can be published that is in violation of government policy. Freedom of press and speech may be subject to criminal prosecution as counterrevolutionary crimes (New York Times, Dec. 3, 1982, p. 14).

Though the People's Republic of China has a constitution that guarantees individual rights, the application of the constitution with respect to other government and party priorities seems to diminish those guarantees. The words may read the same as those in the United States Constitution, but in reality, that is where the similarity ends. It appears when their application is tested in the judicial system, the results depend on whether it was an inquisitory or an adversary system.

ADDENDUM TWO: Discussion Questions.

1. What do you think is the purpose of the Chinese Constitution's guarantees of individual rights?

2. Do you think that purpose is different from the purpose of the United States Constitution's guarantees of individual rights?

3. Do you feel that Chinese efforts to modernize their economic and social institutions influence the interpretation of the constitution?

4. Why do you think China would encourage individual creativity and scientific research among the people?

5. How would you define "civil duties?" Do you feel they are equal to "civil rights" in China?

6. If you were president of a major U. S. company, would you want to engage in a joint business venture with China? What are the pros and cons?

Additional Activity:

1. Ask your students to imagine that they are living in Peking and they have been asked by their local cadres to write a paper listing all the reasons the Chinese Constitution represents the dictatorship of the proletariat (people). Describe the political and philosophical frame of mind you would need in order to role play a Chinese citizen.

2. Make a list of questions regarding the Chinese legal and judicial system that you want answered. Then make a list of people, places, organizations that can help you locate those answers. Write letters to your resources if they are not in your local community.

3. Prepare an article for your local newspaper on the results of your study and research on the Chinese legal and judicial system.

STUDENT ACTIVITY

TITLE: Looking at Mediation: It's Purpose and Practice In China

PURPOSE OF ACTIVITY:

This activity is designed to introduce students to the mediation process. They will examine its application under an inquisitory system of justice. Students will gain introductory knowledge about mediation, but are encouraged to explore the pros and cons of mediation through additional research.

DIRECTIONS:

1. Ask students to read Addendum One.

2. Conduct a class discussion on the information presented in Addendum One using the following questions to introduce the subject.

   a. If you had a disagreement with a friend over where you park your car in the school parking lot, would you like to try to resolve the dispute through mediation? Are there other appropriate ways to resolve the issue?

   b. Would you like to be a mediator in China? In this country? Would your responsibilites be different in China than in the United States?

3. Contact your local Clerk of Court to find out if there is a mediation program in your community. If he or she does not know, ask if there are others in the community who would know.

4. If you do have a mediation program, invite a mediator to your class to discuss his or her responsibilities. Share what you have learned about the role of a mediator in China and discuss the pros and cons for the different types of responsibilities.

ADDENDUM ONE: Looking at Mediation: It's Purpose and Practice in China.

In China 90% of civil and minor criminal matters are handled through a local people's mediation committee. These committees have the power to send "troublemakers" to camps for up to three years of "re-education through labor." The defendant or disputant has the right of appeal to the people's court.

There are presently about 680,500 such mediation committees in China involving almost 4,000,000 mediators. It is estimated that more than 3,000,000 disputes were resolved in this manner in 1980. (China Law Reporter, p. 224, Fall 1983).

The common Chinese use of mediation has been in relatively small disputes, usually on the domestic or neighborhood level, involving marriage conflicts or disagreements between neighbors. Mediation is viewed as an alternative means of dispute resolution, as it is in this country. Mediation is a means of suppressing disputes or preventing them from reaching the point where they must be resolved judicially.

In China, mediation techniques incorporate policies of the Communist party and involve Chinese society. This is illustrated by what have been described recently as the four primary "tools of the trade" of the mediator.

(1) The mediator should actively publicize and encourage the use of mediation as a tool in dispute settlement.

(2) The mediator should know the personalities, occupations, and points of tension and potential disputes of members of the community. So forearmed, the mediator, when a dispute arises, should have a fair idea of what is involved and how the dispute can be settled.

(3) The mediator should pay attention to developing programs to keep children and youth occupied.

(4) The mediator is expected to pay repeated visits to the families within his jurisdiction to maintain communication with them.

Mediation in the United States focuses on the mediator as an impartial person whose primary role is to promote agreement between the parties. The mediator has no authority to impose a settlement on the parties. The purpose of mediation is not to judge guilt or innocence, but to help parties get at the root of their problems and devise their own solutions to them.

In the United States, mediation is defined as a method of resolving disputes and conflicts. It is a voluntary process involving a complainant, the person who brings the complaint, and a respondent, who has done something about which complainant is upset. Compromise is at the heart of a successfully mediated dispute, and the end result of a mediation session is that there are neither winners or losers but rather, it is hoped, generally satisfied individuals.(The Mediation Project, University of Massachusetts/Amherst)

If one of the purposes of our jury system is to inject the voice of the public into our judicial system, the Chinese mediation process is another way of reflecting that principle, while in actuality, giving legally untrained members of the community decision making powers over the fate of their neighbors. China emphasizes the role of its citizens in this capacity and discourages the use of formal judicial procedures. Historically, the Chinese magistrate played the role, but he was acting alone and did not involve the citizens in the decision-making process.

ADDITIONAL RESOURCES

Supplement to Resources Listed in Teaching About Our Jury System, Unit 1.

LESSON ONE

North Carolina Courts, Annual Report of the Administrative Office of the Courts, foreword by Franklin E. Freeman, Jr., Director, Raleigh, 1984.

The Judicial System in North Carolina, by Joan G. Brannon, Administrative Office of the Courts, Raleigh, 1984. North Carolina's Department Sentencing Legislation: An Evaluation of the First Year's Experience, Institute of Government, the University of North Carolina at Chapel Hill, 1983.

Popular Government, a quarterly magazine published by the Institute of Government, the University of North Carolina at Chapel Hill.

Know Youth Rights: A North Carolina Youth Rights Handbook, by Andrea Kay Grinbergs, N.C. Department of Administration, Raleigh, 1982.

The Safe Roads Act of 1983: A Summary and Compilation of Statutes Amended or Affected by the Act, by James C. Drennan, Institute of Government, Chapel Hill, N.C., 1983.

Legal Proceedings Involving Children: Abuse and Neglect Cases, Lou A. Newman, editor, published by the Child Advocacy and Protection Committee, the Family Law Section and Division, North Carolina Bar Association, 1984.

Teaching About Our Jury System, Unit 1, edited by Julie Van Camp, N.C. Administrative Office of the Courts, Raleigh, NC, 1983.

Learning the Law, by Wanda Edwards, Edward G. Carr, Jr., N.C. Department of Justice, Raleigh, NC, 1983.

"The Verdict on Juries," by I. R. Kaufman, The New York Times Magazine, April 1, 1984.

"You and the Jury," by James J. Gobert, Psychology Today, February, 1984.

Standards Relating to Juror Use and Management, James J. Richards, Chairman, Judicial Administration Division, American Bar Association, Chicago, IL, Feb. 1983.

"Two Houston Psychologists Are Proving the Best Defense is a Good Jury," People Weekly, Feb. 21, 1983.

Jury Verdicts: The Role of Group Size and Social Decision Rules, by Michael Saks, Lexington Books, Lexington, MA, 1977.

"The Debate: Illegal Evidence," USA Today, July 9, 1984.

"Judges Learn the Virtues of Videotaping," The New York Times, July 22, 1984.

Vengeance and Justice: Crime and Punishment in the 19th Century American South, by Edward L. Ayers, Oxford University Press, New York, 1984.

Juvenile Court in a Nutshell, 3rd Ed. by Sanford J. Fox, West Publishing Co., St. Paul, MN, 1984.

The Adversary System: A Description and Defense, by Stephan Landsman, American Enterprise Institute Studies in Legal Policy, Washington, DC, 1984.

Jury Selection in Civil and Criminal Trials, 2nd Ed. by Ann Fagan Ginger, Lawpress Corp., Tiburon, CA, 1984.

The Courts: Separation of Powers, edited by Bette Goulet, The Roscoe Pound-American Trial Lawyers Foundation, Washington, D.C., 1983.

Justice in America: Courts, Lawyers, and the Judicial Process, 4th Ed., by Herbert Jacob, Little, Brown and Co., Boston, MA, 1984.

The Law of Schools, Students, and Teachers in a Nutshell, by Kern Alexander and M. David Alexander, West Publishing Co., St. Paul, MN, 1984.

LESSON TWO

"The Death Penalty in Traditional China," by Chin Kim, Georgia Journal of International and Comparative Law, Vol. 4, No. 1, 1975.

Constitutional Government in China: Present Conditions and Prospects, by W. W. Willoughby, Washington Endowment, Washington, D.C., 1922.

Panorama of the World's Legal Systems, by John Henry Wigmore, Washington Law Book Co., Washington, D.C., 1936.

"Shanghai: A Case on Appeal," by Frederick Snyder, American Bar Association Journal, Vol. 66, Chicago, Ill., Dec., 1980.

Verdict in Peking: The Trial of the Gang of Four, by David Bonavia, G.P. Putnam's Sons, New York, 1984.

"The Rights of Children in China," Columbia Human Rights Law Review, Vol. 13, 1981-82.

"China's New Face" Time, April 30, 1984.

"Han's Crime," by Sniga Naoya, The Law in Literature, Simon and Schuster, New York.

"Law Around the World," Update on Law Related Education, American Bar Association, Special Committee on Youth Education for Citizenship, Fall, 1980.

"Beyond Boundaries: Law in a Global Age," 103 Intercom, Global Perspectives in Education, Inc., New York, Jan. 1983.

"Through the Legal Looking Glass: Reflections of Peoples and Cultures," 100 Intercom, Global Perspectives in Education, Inc., New York, Dec. 1981.

Famous Criminal Trials, by Andrew David, Lerner Publications Co., Minneapolis, MN, 1979.

Famous Political Trials, by Andrew David, Lerner Publications Co., Minneapolis, MN, 1980.

Justice and Politics in People's China: Legal Order or Continuing Revolution? by James Brady, Academic, London, 1982.

"The Criminal Law of the People's Republic of China," The Journal of Criminal Law and Criminology, Vol. 73, 1982.

China Update, Vol. III, No. 1, Sept., 1979, Midwest China Study Resource Center, St. Paul, MN.

China Law Reporter, Vol. 11, No. 4, Fall, 1983, Chicago, Ill.

Judicature, Vol. 63, No. 10, May, 1980, Chicago, Ill.

TIPS FOR RESOURCE PERSONS*

I. What the teacher should tell you:

a. The topic you are to address.
b. The age, grade, number and ability of students.
c. The students' background in this subject.
d. Time of the class, suggested dates for presentation, length of time and classroom availability to you.
e. When confirming the visit inquire about parking facilities, classroom location and the phone number where the teacher can be reached if you should cancel.

II. What you should tell the teacher:

a. The specific time and date you can visit the class.
b. The subject on which you will speak.
c. Type of presentation and special needs (e.g. room, seating, arrangements, props, advance preparation for students and whether or not you will supply handouts, etc.)

III. Consider various modes of presentation, you might consult with the teacher for suggestions.

a. Informal lecture with question and answer period.
b. Slides/movie.
c. Role-playing/simulation games/mock trial.
c. Problem-solving for students.
c. Field trips.
f. Panel of guests or students with moderator.

IV. Keep in mind the following:

a. Try to involve the students.
b. Use examples or situations familiar to students in making your point.
c. Have a clear idea of what you're trying to assert and be prepared to be challenged.
d. Suggest ways for interested students to follow up on your presentation at school, within the community or on an individual study basis.
e. Be natural and relate to the students on their level. Avoid jargon.

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*Utah Law-Related Education Project: 1979

CRIMINAL QUESTIONS

1. Are you opposed to the new Safe Roads Act?
2. Do you have an opinion concerning the alleged facts in the case?
3. Do you believe "impairment" is a judgment call by the arresting officer?
4. Do you believe alcohol affects different people in different ways?
5. Do you have a driver's license?
6. Have you ever been involved in an accident with a drunk driver?
7. Do you have relatives or close friends who have been involved in an accident with a drunk driver?
8. Do you belong to a religious or fraternal organization that condemns the sale or use of alcoholic beverages?
9. Do you have relatives or friends who have been found guilty of DWI?
10. Are you related to anyone involved with this case?
11. Do you believe the burden of proof is the same for the prosecution in this case as in the case of rape or murder?
12. Have media accounts of his case caused you to form an opinion about the defendant?
13. Have you ever served on a jury before in a criminal case?
14. Do you believe our system of justice is fair?
15. Would your previous jury experience prevent you from being an impartial juror in this case?
16. Is there any reason you can't sit as an impartial juror in this case?
17. Do you understand that the prosecution must show "beyond a reasonable doubt" that the defendant is guilty as charged?
18. Do you occasionally drink some sort of alcoholic beverage?
19. Have you ever driven a car while consuming an alcoholic beverage?
20. Have you ever had an unpleasant experience with someone who was drinking alcoholic beverages?

21. Do you believe a person can safely drive a car after drinking two beers?

22. Have you ever been convicted of a traffic violation?

23. Do you ever inadvertently look away from the road while driving?

24. Will it be hard to recognize that opening and closing arguments by attorneys are not evidence in the case?

25. Will it be hard for you to disregard evidence the judge rules as inadmissible after you've heard it in open court?

26. Do you have any connection with or interest in an insurance company?

27. Do you believe that the defendant is innocent until proven guilty in this court?

28. Do you feel you would believe a police officer more than the defendant in this case?

29. Do you believe that youth, in general, drink too much and shouldn't be driving cars?

30. Do you believe that the officer is positive the defendant was drunk or he wouldn't have arrested her?

CIVIL QUESTIONS

1. Do you feel you can be a fair and impartial juror in this case?

2. Can you give a company the same honest, fair and impartial trial that you would give an individual?

3. Do you understand that the plaintiff, Kevin, must only show by the "greater weight of evidence" that the defendant is guilty?

4. Do you have an opinion concerning the alleged issues in this case?

5. Are you related to any of the people involved in this case?

6. Do you believe our system of justice is fair?

7. Have you read about this case in the newspaper and formed an opinion about it as a result?

8. Do you believe jurors can decide complex cases?

9. Have you ever been a witness in a civil case?

10. Have you ever served on a jury?

11. Would your previous jury experience prevent you from being an impartial juror in this case?

12. Have you ever been a plaintiff or defendant in a civil case?

13. Do you know any of the people involved in this case?

14. Do you belong to a union?

15. Do you have any connection or interest in an insurance company?

16. Do you have any financial interest in the outcome of this case?

17. Will it be hard for you to disregard evidence the judge rules as inadmissable after you've heard it in court?

18. Will it be hard to recognize that opening and closing arguments by the attorneys are not evidence?

19. Have your ever purchased a new or used car?

20. Have you ever sued anyone because of his/her failure to honor a product warranty?

21. Do you believe traveling salesmen, in general, are too hard on their cars?

22. Do you believe automobile manufacturers and dealers are honest, and produce, sell and service their products in good faith?

23. Have you ever been self-employed as an owner of a business, large or small?

24. Do you have a driver's license?

25. Have you ever worked as a car salesperson?

26. Do you distrust car salespersons in general?

27. Have you ever been fired or terminated as an employee of an automobile manufacturer or dealer?

28. Do you believe that today's mass produced cars just aren't as good as they used to be?

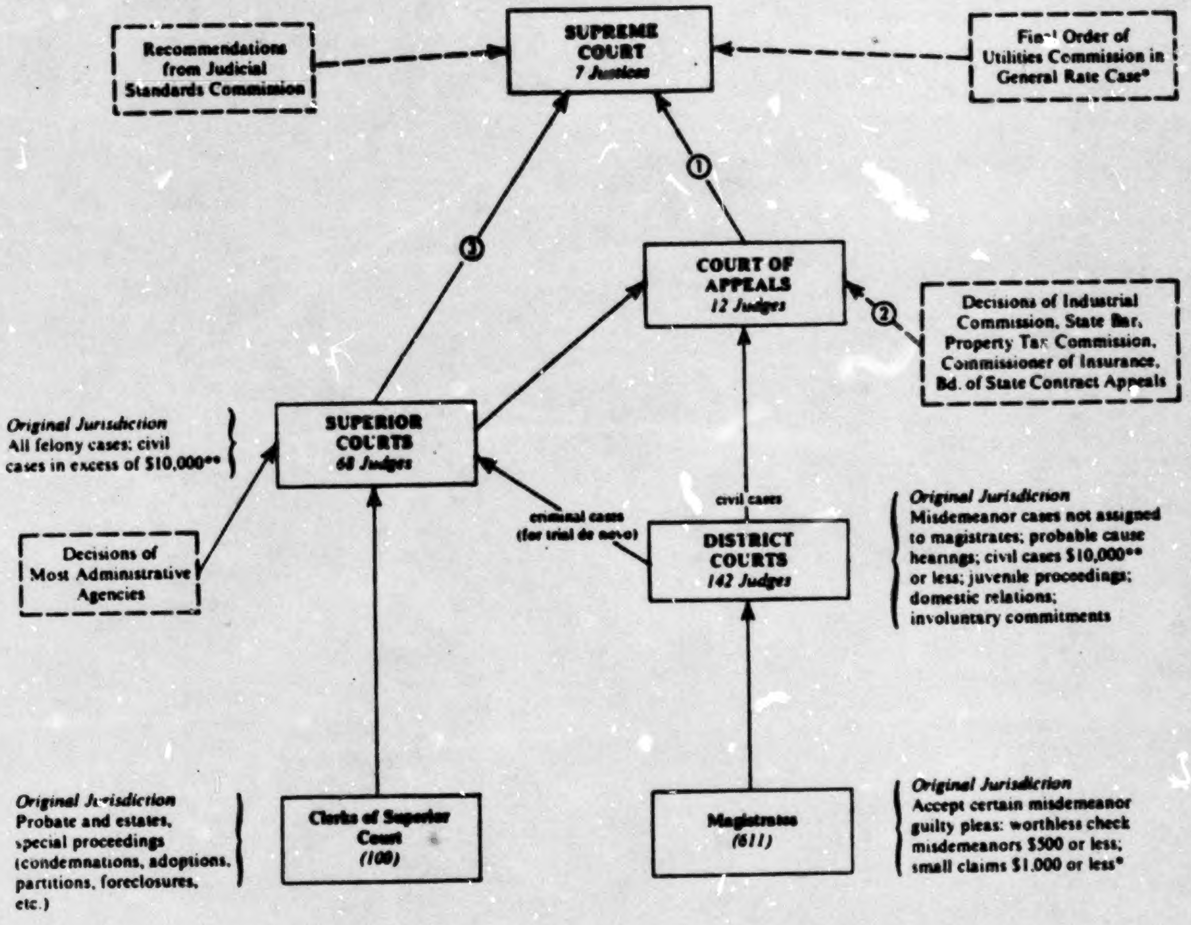
29. Have you (or any member of your family or a close friend) ever purchased a car with which you were dissatisfied because it was a "lemon."

30. Do you believe that most cases should be settled out of court, and not take up the time of jurors?

BEST COPY AVAILABLE

THE PRESENT COURT SYSTEM

Original Jurisdiction and Routes of Appeal


Recommendations from Judicial Standards Commission
SUPREME COURT
7 Justices
Final Order of Utilities Commission in General Rate Case*
①
③
COURT OF APPEALS
12 Judges
②
Decisions of Industrial Commission, State Bar, Property Tax Commission, Commissioner of Insurance, Bd. of State Contract Appeals
Original Jurisdiction
All felony cases; civil cases in excess of $10,000**
SUPERIOR COURTS
68 Judges
civil cases
criminal cases (for trial de novo)
DISTRICT COURTS
142 Judges
Original Jurisdiction
Misdemeanor cases not assigned to magistrates; probable cause hearings; civil cases $10,000** or less; juvenile proceedings; domestic relations; involuntary commitments
Decisions of Most Administrative Agencies
Original Jurisdiction
Probate and estates, special proceedings (condemnations, adoptions, partitions, foreclosures, etc.)
Clerks of Superior Court
(100)
Magistrates
(611)
Original Jurisdiction
Accept certain misdemeanor guilty pleas; worthless check misdemeanors $500 or less; small claims $1,000 or less*

(1) Appeals from the Court of Appeals to the Supreme Court are by right in Utilities Commission general rate cases, cases involving constitutional questions, and cases in which there has been dissent in the Court of Appeals. In its discretion, the Supreme Court may review Court of Appeals decisions in cases of significant public interest or cases involving legal principles of major significance.

(2) Appeals from these agencies lie directly to the Court of Appeals.

(3) As a matter of right, appeals go directly to the Supreme Court in criminal cases in which the defendent has been sentenced to death or life imprisonment, and in civil cases involving the involuntary annexation of territory by a municipality of 5,000 or more population. In all other cases appeal as of right is to the Court of Appeals. In its discretion, the Supreme Court may hear appeals directly from the trial courts in cases where delay would cause substantial harm or the Court of Appeals docket is unusually full.

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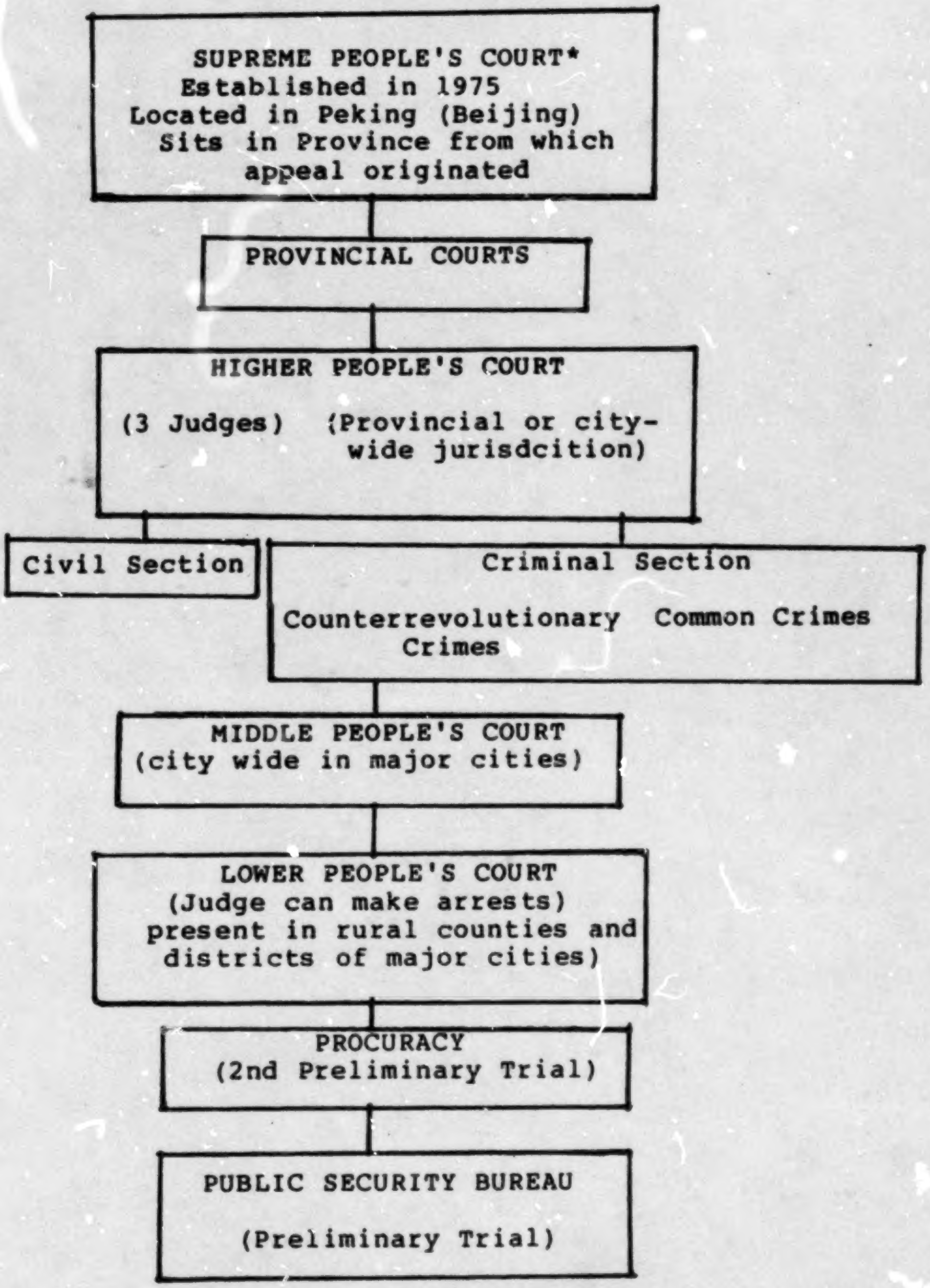
*Effective July 1, 1983, appeals in general rate cases go directly to Supreme Court instead of Court of Appeals.

**The district and superior courts have concurrent original jurisdiction in civil actions (G.S. 7A-242). However, the district court division is the *proper* division for the trial of civil actions in which the amount in controversy is $10,000 or less; and the superior court division is the proper division for the trial of civil actions in which the amount in controversy exceeds $10,000 (G.S. 7A-243).

PEOPLE'S REPUBLIC OF CHINA JUDICIAL SYSTEM


SUPREME PEOPLE'S COURT*
Established in 1975
Located in Peking (Beijing)
Sits in Province from which appeal originated
PROVINCIAL COURTS
HIGHER PEOPLE'S COURT
(3 Judges)
(Provincial or city-wide jurisdcition)
Civil Section
Criminal Section
Counterrevolutionary Crimes
Common Crimes
MIDDLE PEOPLE'S COURT
(city wide in major cities)
LOWER PEOPLE'S COURT
(Judge can make arrests)
present in rural counties and districts of major cities)
PROCURACY
(2nd Preliminary Trial)
PUBLIC SECURITY BUREAU
(Preliminary Trial)

*all courts hear issues of fact and law on appeal.